

ENTERED ON DOCKET  
DATE 7-31-98

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DWAYNE BUFORD REED,

Defendant.

No. 93-CR-88-B  
(No. 98-CV-70-B)

**FILED**

JUL 30 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**JUDGMENT**

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 30<sup>th</sup> day of July, 1998.

  
THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

DATE 7-31-98

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DWAYNE BUFORD REED,

Defendant.

No. 93-CR-88-B  
(No. 98-CV-70-B)

**FILED**

JUL 30 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT**ORDER**

Before the Court is the Defendant Dwayne Buford Reed's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #96) together with his accompanying memorandum (#97). The Plaintiff United States of America has filed its response brief (#104), to which Defendant has filed his reply (#105). After careful review of the motion papers and the record, the Court concludes that Defendant's motion pursuant to § 2255 is time-barred and should be dismissed.

**BACKGROUND**

This case arose out of an attempted armed robbery of the McDonnell-Douglas Federal Credit Union in Tulsa, Oklahoma on May 13, 1993. Two men, wearing hoods over their heads, entered the credit union; one of the men was armed and fired a handgun at the security guard. The bullet hit the guard's desk, and the security guard returned fire, wounding one man in the chest and the other man in the buttocks. The men fled the scene in a stolen car. The police later recovered the car and bloodstained clothing, which was tied to Defendant and co-defendant Demareo Lamont Davis

through DNA testing. Defendant and co-defendant Davis were convicted by a jury of: conspiracy to commit armed robbery of a credit union, in violation of 18 U.S.C. §§ 371, 2113(a) and (d) (count one); entering a federally insured credit union with the intent to commit armed robbery, and aiding and abetting in this offense, in violation of 18 U.S.C. §§ 2 and 2113(a) and (d) (count two); and use or carrying of a firearm during the commission of a crime of violence, and aiding and abetting in this offense, in violation of 18 U.S.C. §§ 2 and 924(c)(1) (count three).

Defendant was sentenced to 48 months on each of counts one and two, to run concurrently, and 60 months on count three, to run consecutively, for a total of 108 months, to be followed by five years of supervised release. Restitution in the amount of \$1,097 was also imposed jointly and severally with co-defendant's similar obligation.

Defendant appealed, raising nine grounds of error including the admission of DNA evidence, the exclusion of an alibi witness, and the denial of Defendant's motion to suppress certain evidence. The Court of Appeals for the Tenth Circuit affirmed Defendant's conviction on November 15, 1994. United States v. Davis, 40 F.3d 1069 (10<sup>th</sup> Cir. 1994). The United States Supreme Court denied Defendant's petition for writ of certiorari on March 20, 1995.

On January 26, 1998, Defendant proceeding *pro se* filed this § 2255 motion raising two issues: (1) sufficiency of the evidence to support his conviction under § 924(c)(1) under an aiding and abetting and conspiracy theory; and (2) the jury instructions were erroneous in light of the Supreme Court's decision in Bailey v. United States, 516 U.S. 137 (1995) (#96 at 4-5). The government responded that the motion was untimely because it was filed outside the one-year time limitation established by § 2255, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"). Defendant replied that the one year time limitation should not run from the date his

conviction became final, but from the later of the dates on which the Supreme Court decided Bailey and Muscarello v. United States, 118 S.Ct. 1911 (1998), both cases having to do with the definitions of "use" and "carrying" of firearms under § 924(c)(1).

### *ANALYSIS*

The government has raised the issue that Defendant's motion is time-barred because it was not filed until January 26, 1998, some nine months after the statute of limitations had elapsed. Prior to the enactment of the AEDPA on April 24, 1996, § 2255 contained no statute of limitations. The AEDPA amended 28 U.S.C. § 2255 by adding a time-limit provision. Specifically, 28 U.S.C. § 2255 now provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the fact supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In United States v. Simmonds, 111 F.3d 737, 746 (10<sup>th</sup> Cir. 1997), the Tenth Circuit held that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." In so doing the Tenth Circuit allowed these prisoners a grace period of one year after the AEDPA's enactment within which to file their § 2255 motions.

Defendant's conviction and sentence were affirmed on appeal on November 15, 1994, and certiorari was denied on March 20, 1995. Therefore, Defendant's conviction became final on March 20, 1995. See Griffeth v. Kentucky, 479 U.S. 314, 321 n. 6 (1987). Pursuant to Simmonds, Defendant had until April 23, 1997 to file his motion under the limitations period set forth in § 2255(1). However, Defendant's § 2255 motion was not filed with the Court until January 26, 1998. The certificate of mailing indicates that Defendant mailed the § 2255 motion on January 20, 1998 (#96 at 7). Thus, Defendant's motion is clearly untimely if the statute of limitations is measured from the date his conviction became final.

The only evidence indicating that Defendant may have intended to file his § 2255 motion earlier is a letter from Defendant dated September 17, 1997 and received by the Clerk of the Court on September 22, 1997 (#95). In this letter Defendant advises of a change of address and also states:

I have filed a motion pursuant to 28 U.S.C. 2255 in this court. As of the date of this correspondence I have not received any information from the court as to the status of this motion. Thus, I ask this court to forward to me (at the above address). Any and all info regarding the disposition of cause action #93-CR-88-02B.

A thorough search of the record reveals no earlier § 2255 motion filed or sent to the Court by Defendant. Indeed, in his reply to the government's response raising the statute of limitations, Defendant does not claim that he filed the instant § 2255 motion or any other § 2255 motion before April 24, 1997. Accordingly, the Court finds that Defendant's § 2255 motion filed January 26, 1998 is outside the one-year statute of limitations if measured from the date his conviction became final.

Defendant argues that his § 2255 motion is not time-barred for two reasons. First, Defendant asserts that the limitations period is properly measured from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme

Court and made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255(3). Defendant claims he is asserting rights recognized in the Bailey and Muscarello decisions interpreting the "use or carry" prongs of § 924(c)(1); thus, he argues, the limitations period should be measured from June 8, 1998, when Muscarello was decided. Second, Defendant contends that under Rule 9, Rules Governing 2255 Proceedings, his motion is not a "delayed motion" because the government has not alleged it is prejudiced in its ability to respond.

Defendant's second argument may be dispatched quickly. Rule 9(a) has historically provided a laches defense which the government may assert with respect to certain delayed post-conviction motions. This defense is entirely separate from the one-year limitations period enacted as part of the AEDPA in 1996. While the laches defense under Rule 9(a) requires the government to establish prejudice, no such showing is required to enforce the statute of limitations now contained in § 2255. Accordingly, Defendant's reliance on Rule 9(a) is misplaced.

Defendant's first argument — that the statute of limitations should be measured under § 2255(3) — requires that the right he asserts in his § 2255 motion be newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review no later than January 27, 1997, one year prior to the filing of his § 2255 motion. In Bailey, the Supreme Court narrowly interpreted "use" of a firearm for purposes of § 924(c) as requiring evidence that a defendant "actively employed," rather than merely possessed, the firearm. This decision arguably recognized a new right for purposes of calculating the limitations period of § 2255(3); however, because Bailey was decided on December 6, 1995, the limitations period for motions raising Bailey claims expired under § 2255(3) on December 5, 1996, long before Defendant filed his § 2255 motion. Even measuring the limitations period from August 20, 1996, the date of the Tenth Circuit decision holding that Bailey

applies retroactively, United States v. Barnhardt, 93 F.3d 706, 708 (10th Cir. 1996), does not render timely Defendant's motion filed in January, 1998.

Defendant, however, makes the additional argument that the limitations period should run from the date of the Supreme Court's June 8, 1998 Muscarello decision. In that case, the Court addressed the question of whether § 924(c)(1)'s phrase "carries a firearm" is limited to the carrying of firearms on the person. The Court decided it was not so limited, but that it also applies to a person who "knowingly possesses and conveys firearms in a vehicle, including in the locked glove compartment or trunk of a car, which the person accompanies." Muscarello, 118 S.Ct. 1911, 1913-14. Defendant argues that this decision, by finally defining the "carry element," initially recognized his right not to be convicted of carrying a firearm during and in relation to a crime of violence (#105 at 3). Defendant's argument is undercut by the fact that he filed his § 2255 motion over four months before Muscarello was decided; thus, the Muscarello decision could have had no bearing on Defendant's assertion of rights in his motion. In any event, however, contrary to Defendant's argument this decision did not recognize any new right of criminal defendants, but merely upheld the broad reading of the "carries" prong which had been unanimously adopted by the Federal Circuit Courts of Appeals. See id. at 1916. Accordingly, notwithstanding Defendant's creative attempts to avoid the application of the statute of limitations, the Court concludes that the limitations period is properly determined under § 2255(1) to have expired no later than April 24, 1997.

Therefore, because Defendant's § 2255 motion was not filed before the expiration of the statute of limitations, Defendant's motion must be dismissed as untimely pursuant to the authority of § 2255, as amended by the AEDPA.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket #96) is dismissed with prejudice as time-barred.

SO ORDERED THIS 30<sup>th</sup> day of July, 1998.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**F I L E D**

JUL 29 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY GENE HARRIS,

Defendant.

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

No. 89-CR-72-B  
(97-CV-416-B)

ENTERED ON DOCKET

DATE 7-31-98

### JUDGMENT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 27<sup>th</sup> day of July, 1998.

THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE

7-31-98

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 29 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY GENE HARRIS,

Defendant.

No. 89-CR-72-B  
(97-CV-416-B)

**ORDER**

Before the Court is the *pro se* Defendant Billy Gene Harris's amended motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket ##184 and 185). The government has filed its response (#191), to which Defendant filed a rebuttal (#194). Thereafter the government filed a reply to Defendant's rebuttal (#195), and Defendant filed a second rebuttal to the government's reply (#196).

Defendant next filed a "Motion for Summary Judgment and for Hearings on the Factual Issues in Dispute" (#197) asserting that the government failed to deny some issues of the § 2255 motion; thus, Defendant argues, pursuant to Rule 8(d) of the Federal Rules of Civil Procedure, "that which the government has not denied, and has not proven becomes factual" which requires the entry of summary judgment in Defendant's favor. Defendant also attaches to the motion for summary judgment a "Motion Requesting that the Court Expand the Record" to "include all exhibits, affidavits, and case law submitted by petitioner in the Motion under 28 U.S.C. § 2255."

After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the amended motion pursuant to §2255 lacks merit and should be denied. Defendant's motions for summary judgement and for hearings on the factual issues in dispute should also be denied, and his motion to expand the record should be denied as moot.

## BACKGROUND

On December 1, 1989, Defendant was convicted of two counts of first degree murder for the deaths of Joseph Edward Buck Cheshewalla and Gloria Maude Cheshewalla, in violation of 18 U.S.C. §§ 1111, 2, and 1153. The Cheshewallas were members of the Osage Indian tribe, and were murdered at their Osage County residence, alleged in the indictment to be "an Osage Indian allotment, the Indian title to which had not been extinguished." (#1). Indicted with Defendant was co-defendant Eugene Mervin Sides, who was also convicted of the murder charges after a separate trial. On January 20, 1990, Defendant was sentenced pursuant to the Federal Sentencing Guidelines to concurrent terms of life imprisonment without the possibility of parole. Restitution in the amount of \$11,190 was also imposed.

On appeal, Defendant argued that:

1. He was improperly prosecuted under 18 U.S.C. § 1853;
2. The Court erred by failing to suppress four statements of confession that Harris argued he made involuntarily;
3. The Court erred by improperly imposing a restitution order without considering his financial resources or earning ability; and
4. The prosecutor made improper and prejudicial remarks during closing argument which deprived him of a fair trial.

The Court of Appeals for the Tenth Circuit (the "Tenth Circuit") remanded for reconsideration of the restitution order, but affirmed Defendant's conviction and sentence in all other respects. United States v. Harris, No. 90-5028, 1992 WL 33210 (10<sup>th</sup> Cir. Feb. 21), cert. denied, 504 U.S. 962 (1992). This Court reconsidered its ruling in accordance with the Tenth Circuit's

instructions and reimposed the restitution order, which the Tenth Circuit affirmed. United States v. Harris, 7 F.3d 1537 (10<sup>th</sup> Cir. 1993).

Defendant later moved to obtain a free transcript to assist him in preparing a motion pursuant to § 2255. This Court denied that motion and the Tenth Circuit affirmed. United States v. Harris, No. 94-5029, 1995 WL 394151 (10<sup>th</sup> Cir. July 5, 1995). Defendant then filed a motion pursuant to Fed. R. Crim. P. 41(e) for the return of property seized from his residence pursuant to a search warrant. This Court found that the property in question had been stolen from the murder victims, and denied Defendant's motion. The Tenth Circuit affirmed. United States v. Harris, No. 96-5067, 1996 WL 494416 (10<sup>th</sup> Cir. Aug. 27, 1996).

Defendant filed the instant motion pursuant to § 2255 on April 28, 1997, listing the following grounds for relief and elaborating on them in the accompanying memorandum:

1. **Criminal statute is not applicable to crime charged.**

Does 18 U.S.C. § 1111 authorize the United States Government to prosecute acts not taking place within the territorial jurisdiction of the United States?

2. **Statute is not applicable to Petitioner.**

Does 18 U.S.C. § 1153 apply to any act not committed by Any Indian?

3. **Not reservation land.**

Was the land on any Indian Reservation?

4. **No Constitutional Jurisdiction.**

Did the land in question fall under any constitutional jurisdiction of the United States?

5. **No jurisdiction in Court.**

What is the jurisdiction of the United States District Court?

6. **Beyond legislative powers of Congress.**

Does the legislative powers of Congress reach the instant Criminal action?

7. **Allotment land.**

Is the land in question allotment land and if so does this bring it within territorial jurisdiction of the Federal Government.

8. **Search and seizures were illegal.**

Was the search of petitioners home and seizures of items not on the search illegal, and does that illegal search in return forbid the use of any evidence which was the fruits that search produced?

9. **There was no probable cause.**

There was no probable cause to search and/or arrest in the petitioners case.

10. **Defective indictment.**

Indictment was defective.

11. **Arrest and detention was under color of Federal law.**

Was petitioner in Federal Custody at the time of his arrest by Sheriff acting in collusion [sic] with federal authorities in the investigation of what was termed a federal crime, by the request of federal officers.

12. **Ineffective trial counsel.**

Ineffective assistance of counsel at trial.

13. **Ineffective appeal Counsel.**

Ineffective counsel on appeal.

The government responded that Defendant's claims relating to a lack of subject matter jurisdiction were addressed and decided against Defendant on appeal. The government raised the defense of procedural bar as to Defendant's claims concerning the legality of the search warrant and his arrest and the admissibility of the resulting evidence, including his confessions. Further, the government contended that Defendant's claims of ineffective assistance of trial and appellate counsel were conclusory statements insufficient to justify relief.

In his rebuttal, Defendant again claimed that the government failed to prove that the murder occurred on Indian Country. Additional arguments were propounded by the government in a reply to Defendant's rebuttal, to which Defendant countered in a second rebuttal brief.

### ANALYSIS

**A. Defendant's motions for summary judgment and to expand the record are denied.**

The Court first addresses Defendant's motion for summary judgment, in which he contends that the government failed to deny certain issues in his § 2255 motion or denied them so disingenuously as to amount to no denial at all. Therefore, Defendant asserts, "[p]ursuant to Rule 8(d) of the Federal Rules of Civil [sic] Procedure, that which the government has not denied, and has not proven becomes factual." (#197 at 1). The Court's review of the government's response, however, indicates that the government fully addressed all of Defendant's issues and arguments. Further, the Court concludes that Rule 8(d) applies to factual averments in civil pleadings, not legal argument. See United States v. Krueger, No. 97-6262, 1998 WL 161070, at \*2 (10th Cir. April 1, 1998). Thus, the Court finds this motion to be without merit.

Defendant's "Motion Requesting that the Court Expand the Record" is moot because the attachments submitted by Defendant with his § 2255 motion are already part of the official record.

**B. Defendant's Claims 1-7 challenging subject matter jurisdiction are barred as already adjudicated by the Tenth Circuit or are without merit.**

Defendant's first seven claims all attack the Court's subject matter jurisdiction over this criminal case. The government correctly points out that this issue was decided on appeal. There, Defendant contended that the evidence was insufficient to prove a violation of 18 U.S.C. § 1153, as charged by the indictment. Section 1153, together with 18 U.S.C. § 1111, confers federal jurisdiction over the offense of murder committed by an Indian. Defendant unquestionably is a non-Indian, while the victims were Indians. The Tenth Circuit therefore found that Defendant should have been charged under 18 U.S.C. § 1152, which makes the murder of an Indian by a non-Indian in "Indian country" an offense within the exclusive jurisdiction of the United States. Harris, 1992 WL 33210 at \*3 (citing United States v. John, 587 F.2d 683, 686 (5<sup>th</sup> Cir. 1979)).

However, the Tenth Circuit concluded that the jurisdictional error in the indictment was harmless beyond a reasonable doubt. The Court cited decisions from the Ninth Circuit which held that similar errors were harmless, and noted that:

Similarly, here, Harris was fully apprised of the murder charge against him, and of the alleged facts upon which federal jurisdiction was conferred. The indictment charged that the victims were each Osage Indians, and that the murders had been committed on an Osage Indian allotment. The government established at trial that the alleged murders occurred within Indian country as required under § 1152. R. Vol. VI at 4-5.

Id. Defendant's second enumerated argument in the § 2255 motion, that 18 U.S.C. § 1153 is not applicable to a non-Indian, is specifically encompassed by the Tenth Circuit's holding that the correct jurisdictional statute is § 1152, rather than § 1153, but that this charging error was harmless. Absent an intervening change in law, a defendant may not raise in a § 2255 motion issues that have

already been adjudicated on direct appeal. United States v. Cox, 83 F.3d 336, 342 (10th Cir. 1996); United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994). Accordingly, Defendant is barred from now relitigating this issue.

Defendant raises additional jurisdictional challenges to his conviction, specifically protesting the constitutionality of § 1152 (claims 1, 4-6) and the determination that the murder site was within Indian Country so as to bring the crime under federal jurisdiction (claims 3, 7). For the reasons discussed below, these arguments are not persuasive.

Congress' ability to assert federal jurisdiction over certain crimes committed by or against Indians is grounded in the United States Constitution. U.S. CONST. art. I, § 8, cls. 1, 3 ("The Congress shall have Power ... To regulate Commerce ... with the Indian Tribes ...."). The constitutionality of § 1152 is long-settled and need not be re-examined based on Defendant's arguments in claims 4-6 that Congress or this Court had no jurisdiction over this crime. See generally, Donnelly v. United States, 228 U.S. 243 (1913) (affirming the federal conviction of a non-Indian for the murder of an Indian, pursuant to a predecessor to 18 U.S.C. § 1152) (cited by United States v. Wanoskia, 800 F.2d 235, 239 (10th Cir. 1996) (involving a proceeding under § 1153)).

Defendant's claims 3 and 7 challenge the determination that the murder occurred in "Indian Country," as required by § 1152. "Indian Country" is a term of art, and includes "(a) all land within the limits of any reservation under the jurisdiction of the United States government ..., (b) all dependent Indian communities within the borders of the United States ..., and (c) all Indian allotments, the Indian titles to which have not been extinguished, including all rights-of-way running through the same." 18 U.S.C. § 1151. This last category includes lands held in trust by the federal



Government for an Indian allottee. United States v. Pelican, 232 U.S. 442 (1914). In addition, the Supreme Court has held that Indian Country as defined in § 1151(c) also encompasses a restricted allotment, in which fee title is held by an Indian allottee but the allottee cannot alienate the property without approval of the Secretary of the Interior. United States v. Ramsey, 271 U.S. 467 (1926). The Supreme Court recently reaffirmed that "Indian allotments, whether restricted or held in trust by the United States," are Indian country. Oklahoma Tax Commission v. Sac and Fox Nation, 508 U.S. 114, 123 (1993).

Faced with arguments similar to those made by Defendant, the Tenth Circuit has affirmed the continuing validity of Ramsey and rejected the assertion that federal jurisdiction under § 1153 over crimes committed on a restricted allotment must be limited to recently allotted property which is still held by the original "uncivilized" allottee. United States v. Burnett, 777 F.2d 593, 595 (10<sup>th</sup> Cir. 1985) (murder victim, a member of the Osage tribe, had inherited the allotment from his father). In Burnett, the Tenth Circuit explicitly disagreed with the defendant's assertion that Ramsey's holding was obsolete due to reduced federal supervisory control over the tribe and federally legislated changes in the nature of the restrictions on Osage property interests. Id. at 596. See also, United States v. Sands, 968 F.2d 1058, 1062 (10<sup>th</sup> Cir. 1992).

At Defendant's trial, the government introduced the testimony of Royal Edward Thornton, a realty officer with the federal Bureau of Indian Affairs ("BIA") in Osage County. Thornton testified that Maude Cheshewalla had been deeded the residence and adjoining 320 acres by her father, and this property was restricted and could not be alienated by Mrs. Cheshewalla without approval of the Secretary of the Interior. (Tr. of Jury Trial at 4). Thornton testified that the property was an original Indian allotment still in the family's chain of title. (Tr. of Jury Trial at 5). Defense

counsel did not cross-examine Thornton or otherwise challenge the property's status as Indian Country.

As noted above, on appeal the Tenth Circuit concluded that "[t]he government established at trial that the alleged murders occurred within Indian country as required under § 1152." Harris, 1992 WL 33210 at \*3. Defendant now seeks to challenge this finding by attaching to his rebuttal brief several documents: a copy of the holographic will of Gloria Maude Cheshewalla, leaving her property to her husband and son; a copy of the final decree approving the distribution of her estate which mentions in the heading that Mrs. Cheshewalla is an "unallotted Osage"; a statement from the Osage County Treasurer that 1995 taxes on property owned by Joseph Cheshewalla, the murder victims' son, were paid on 1-26-96 by the Osage Indian Agency; and a tax receipt to that effect. (#194).

The government responded with an affidavit from BIA realty officer Thornton showing the chain of title to the property from the original allotment in 1909 through the restricted deed to Mrs. Cheshewalla from her father. (#195). The government also included a copy of the deed in Mrs. Cheshewalla's name which contains the plain restriction that the property can not be alienated or encumbered without the approval of the Secretary of the Interior. (#195).

The Court is not persuaded by Defendant's arguments that the land in question is no longer allotted land or Indian Country. Defendant does not dispute that, at the time of the victims' deaths, Mrs. Cheshewalla's ownership of the site was restricted by the prohibition against alienation without the approval of the Secretary of the Interior. Pursuant to the authority of Ramsey, Burnett, and Sands, such a restricted allotment constitutes Indian Country sufficient to confer jurisdiction for purposes of § 1152. Defendant's claim that state taxes were paid on the property for 1995 by the

Agency for Indian Affairs is not relevant to the status of the property at the time of the murders—1989—nor in any event does the taxability of property seem a dispositive factor in determining its status for purposes of § 1152. Accordingly, the Court concludes that Defendant has failed to establish that the murders did not take place within Indian Country or that federal jurisdiction over the crime was lacking.

**C. Claims 8-11, challenging validity of the search and arrest, are procedurally barred.**

Defendant claims that the search warrant and his subsequent arrest were illegal because they were based on information provided by an unreliable informant; therefore, the four confessions he made while in custody should have been suppressed. Defendant further claims that the county sheriff who conducted the search was acting under color of federal law and did not follow the “knock and announce” requirement of 18 U.S.C. § 3109. Defendant further alleges that he was not taken before a federal magistrate within 72 hours as required by the Federal Rules of Criminal Procedure. The government asserts that these claims are procedurally barred as they were not raised on appeal.

It is well settled that “[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal.” United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant may not assert issues which were not raised in his direct appeal unless he establishes cause for his default and prejudice resulting therefrom, or can show that a fundamental miscarriage of justice will occur if his claims are not addressed. United States v. Cook, 45 F.3d 388, 392 (10th Cir.1995). The procedural default rules developed in the context of habeas corpus cases apply with equal force in § 2255 cases. United States v. Frady, 456 U.S. 152, 166-69 n. 15 (1982).

The "cause" standard requires a defendant to show that some objective factor external to the defense impeded his ability to raise an issue on direct appeal. See Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence or a change in the law. Id. Ineffective assistance of counsel is another example of an external factor that may constitute "cause" excusing a procedural default. Cook, 45 F.3d at 392. As for prejudice, a defendant must show "'actual prejudice' resulting from the errors of which he complains." Frady, 456 U.S. at 168 (1982). The "fundamental miscarriage of justice" exception requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Because Defendant's claims relating to the legality of the search and his arrest, the enforcement of the search warrant, and the timeliness of his arraignment were not raised on appeal, he is procedurally barred from now raising them unless he shows "cause and prejudice" or that a fundamental miscarriage of justice will occur if his claims are not addressed. Defendant claims generally that his failure to raise these issues on direct appeal resulted from ineffective assistance of counsel. (#196 at 6). Therefore, the Court examines whether Defendant's allegations of ineffective assistance of counsel constitute "cause" sufficient to overcome the procedural bar as to his Fourth Amendment claims.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. Cook, 45 F.3d at 392.

Because the procedural bar is imposed due to Defendant's failure to raise his claims on direct appeal, the Court must examine the merits of the issues omitted upon appeal. Id. If the omitted issues are without merit, counsel's failure to raise them does not amount to constitutionally ineffective assistance of counsel. Id. at 393.

Prior to trial, defense counsel moved to suppress physical evidence obtained by state police officers from Defendant's residence, based on a lack of probable cause or valid consent to search. (#59). The defense also moved to suppress Defendant's incriminating statements taken by state police officers. (#70). The Court held a hearing on these motions, at which evidence was received including the testimony of Defendant and others. The evidence showed that state police officer Williams obtained a search warrant for Defendant's home based in part on information provided by co-defendant Sides. Prior to serving the search warrant, Defendant's wife consented to a search of the residence. Following his arrest, Defendant also signed consents to search. The Court concluded that the search of Defendant's residence was consensual, at least up to the point that the team of officers with the search warrant arrived, and that the searches were valid. The Court also held that the four confessions given by Defendant over a three-day period were voluntary and admissible. (Tr. of Hr'g on Mot. To Suppress, Nov. 13, 1989 at 23).

On appeal, new appointed counsel focused on the admissibility of the confessions. After a lengthy discussion of the factors considered in assessing the voluntariness of a confession as applied to the facts of this case, the Tenth Circuit agreed with this Court that the statements were freely and voluntarily given. Harris, 1992 WL 32210 at \*4-7.

Reviewing Defendant's allegations concerning the legality of the search and seizure in light of the record in this case, the Court concludes that this issue is without merit. Thus, counsel did not

err in failing to raise this issue on appeal, and Defendant has failed to show cause sufficient to overcome the procedural bar.

Similarly, Defendant's assertion that the police executing the search warrant were required to "knock and announce" and failed to do so is not supported by the evidence produced at the suppression hearing. Also, the timeliness of Defendant's arraignment was not raised before trial, and Defendant has shown no cause sufficient to overcome the procedural bar with respect to this claim. Defendant's claim that the indictment was illegal because it was based upon illegally obtained evidence is groundless in view of the Court's finding that the seizure was valid. Further, any technical or procedural violation affecting the grand jury's finding of probable cause is harmless error after a trial jury has found Defendant guilty as charged beyond a reasonable doubt. United States v. Mechanik, 475 U.S. 66, 942 (1986). Therefore, Defendant's claim of illegal indictment is without merit. Appellate counsel did not err in failing to raise these issues on appeal, and Defendant has failed to show cause sufficient to overcome the procedural bar.

The only other avenue by which Defendant can have these claims reviewed is by showing that a "fundamental miscarriage of justice" will result if the procedural bar is invoked. This exception applies "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray v. Carrier, 477 U.S. at 496 (1986). Defendant does not claim that he is actually innocent of the charges. Therefore, the "fundamental miscarriage of justice" exception is inapplicable and these claims are procedurally barred.

**D. Claim 12, ineffective assistance of trial counsel, is without merit.**

Defendant contends that trial counsel failed to: investigate the case, interview or cross-examine government witnesses, move to suppress evidence from the illegal search, move to suppress

the hearsay testimony of Officer Williams as to statements made by co-defendant Sides, or put on any defense whatsoever.

As previously noted, to establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also McKhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Strickland, 466 U.S. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

Defendant makes the conclusory allegation that counsel failed to investigate and failed to interview government witnesses but does not specify what information counsel could have been expected to uncover by taking this action. While counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary, a

particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. Strickland, 466 U.S. at 690. An attorney's decision not to interview witnesses and to rely on other sources of information, if made in the exercise of professional judgment, is not ineffective assistance of counsel. United States v. Glick, 710 F.2d 639, 644 (10th Cir. 1983).

The Court's review of the trial proceedings establishes that the performance of Defendant's attorney was well within the wide range of professionally competent assistance. Contrary to Defendant's allegations, defense counsel did cross-examine the government's witnesses and interposed numerous evidentiary objections during their testimony. As noted above, counsel moved to suppress Defendant's confessions and the evidence seized during the search of his residence and filed other pretrial motions on Defendant's behalf. Defense counsel also objected to Officer Williams' testimony with respect to information provided by co-defendant Sides. (Tr. of Jury Trial at 72). After reviewing the record, the Court concludes that Defendant's conclusory allegations of counsel's errors fail to overcome the strong presumption that counsel's performance was within the range of reasonably professional assistance. Strickland, 466 U.S. at 688. Accordingly, Defendant's claim of ineffective assistance of trial counsel is without merit.

**E. Claim 13, ineffective assistance of appellate counsel, is without merit.**

Defendant alleges that appellate counsel failed to raise issues that he requested be appealed and failed to read the complete trial transcript. Defendant lists eight issues which appellate counsel failed to raise on appeal (#184 at 42 and #185 at 1):

1. Pre-trial publicity deprived petitioner of a fair trial.
2. Counsel's failure to move for suppression of the illegal detention prior to trial, and



before charges in federal court.

3. Counsel's failure to raise the issue of jurisdiction in the instant offense. The fact being that the United States enjoyed no jurisdiction of any sort.
4. Counsel's failure to raise the issue of 10 weapons which in trial were in no way connected to the petitioner.
5. Counsel's failure to raise the issue of the search warrant that was illegally obtained.
6. Counsel's failure to raise the issue of the improperly admitted testimony of the governments [sic] main witness.
7. The failure to challenge the fact that the statute alone is not applicable to petitioner.
8. Failure to raise the issue of the court's refusal to allow the defense to poll the jury, as was requested at trial.

None of these issues, either as discussed previously or below, has merit. Defendant fails to elaborate on his claim of unfair pretrial publicity and the record is devoid of any evidence supporting such a claim. Further, as noted above, counsel did appeal the issue of the incorrect statute under which Defendant was charged, and the Court has determined that Defendant's remaining jurisdictional challenges are not well-founded. The issue relating to a connection between Defendant and the firearms taken from the murder victims' home or located elsewhere was raised at trial, and the Court concludes that appellate counsel did not err in failing to include it on appeal. Defendant's claim that counsel erroneously failed to appeal the Court's refusal to poll the jury is also not well-founded. The record shows that the Court polled the jury not once but twice as to the verdict (the second polling followed the jury's completion of a second special interrogatory which inadvertently had been excluded from the final verdict form given the jury during initial deliberations). (Tr. of

Verdict, Dec. 1, 1989 at 8-9 and 20-21). However, construing Defendant's claim liberally, Defendant may be referring to the Court's refusal to question the jury as to whether they saw a certain newspaper article describing the trial and allegedly published the previous day. Defense counsel made this request only after the jury had returned its guilty verdict, and counsel did not have a copy of the article in question to show the Court. The Court denied the request as untimely, because counsel waited until after the verdict was read and the jury was polled to bring it to the Court's attention, despite learning about the article the evening before. (Tr. of Verdict, Dec. 1, 1989 at 11). Appellate counsel did not err in failing to raise this issue on appeal, as there was absolutely no evidence that any juror saw the article in question and the Court had repeatedly admonished the jury not to permit itself to be exposed to media presentations.

Indeed, upon review of the record the Court finds appellate counsel's decision to focus solely on three issues (i.e., the incorrect charging statute, the voluntariness of Defendant's confessions, and the propriety of imposing restitution) entirely reasonable and notes that appellate counsel was successful in having the restitution order vacated and remanded for further hearings. Accordingly, the Court concludes that appellate counsel's performance was not constitutionally deficient. Strickland, 466 U.S. at 688.

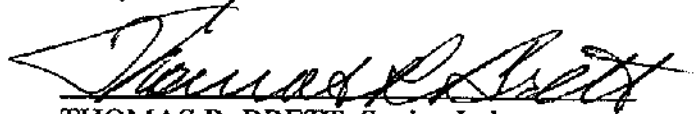
### **CONCLUSION**

Defendant's various jurisdictional claims are either barred as already adjudicated by the Tenth Circuit or are without merit. His claims relating to the legality of the search warrant and his arrest and any resulting evidence are procedurally barred, and his claims of ineffective assistance of trial and appellate counsel are without merit. Therefore, the Court concludes that Defendant's amended motion to vacate, set aside, or correct sentence should be denied.

#### **ACCORDINGLY, IT IS HEREBY ORDERED that:**

1. Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (#184), as amended (#185), is **denied**.
2. Defendant's motion for summary judgment and for hearings on the factual issues in dispute (#197) is **denied**.
3. Defendant's motion requesting that the court expand the record (attached to #197) is **denied** as moot.

SO ORDERED THIS 27<sup>th</sup> day of July, 1998.

  
THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 7-31-98

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM MICHAEL EVANS  
and GREGORY DAMIEN LORSON

Defendants.

CRIMINAL NO. 97-CR-135-K

FILED

JUL 30 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

PRELIMINARY ORDER OF FORFEITURE

WHEREAS, in the Superseding Indictment filed in the above-captioned case on February 13, 1998, the United States sought forfeiture of specific property of the defendants, WILLIAM M. EVANS a/k/a WILLIAM MICHAEL EVANS pursuant to 18 U.S.C. § 1957 as proceeds of the money laundering activities charged in Counts Sixteen and Eighteen Superseding Indictment and GREGORY DAMIEN LORSON a/k/a GREGORY D. LORSON pursuant to 18 U.S.C. § 1957 as proceeds of the money laundering activities charged in Counts Sixteen and Seventeen of the Superseding Indictment, as property involved in the offenses set forth in the superseding indictment or as property traceable to such property.

AND WHEREAS, on February 17, 1998, this matter came on for trial, and following the jury trial of this case, the defendant WILLIAM M. EVANS was found guilty of Counts 1 through 16 and Count 18 and the defendant GREGORY DAMIEN LORSON was found guilty of Counts 1 through 17 of the Superseding Indictment.

AND WHEREAS following the verdict on the substantive charges, on June 3, 1998, the court entered an Order against the Defendant WILLIAM M. EVANS forfeiting all of the property alleged to be subject to forfeiture in Count Nineteen of the Superseding Indictment filed February 13, 1998, to-wit:

- a. Approximately \$57,500 in United States Currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was involved in the offenses set forth in the Superseding Indictment or is traceable to such property;

based upon evidence presented to the jury at the criminal trial;

AND WHEREAS following the verdict on the substantive charges, on June 3, 1998, the court entered an Order against the Defendant GREGORY D. LORSON forfeiting all of the property alleged to be subject to forfeiture in Count Nineteen of the Superseding Indictment filed February 13, 1998, to-wit:

- a. One 1979 Bentley T2 automobile bearing vehicle identification number SBK37898;
- b. Approximately \$25,000 in United States Currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property which was involved in the offenses set forth in the Superseding Indictment or is traceable to such property;

based upon evidence presented to the jury at the criminal trial;

AND WHEREAS, by virtue of said Order pursuant to Counts 19 and 20 of the Superseding Indictment, the United States is now entitled to possession of said vehicle and currency, pursuant to 18 U.S.C. § 982.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. That based upon the Order entered on June 3, 1998, on Counts 19 and 20 of the Superseding Indictment, the United States is hereby authorized to seize the following-described vehicle and currency:

- a. Approximately \$57,500 in United States Currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property or is traceable to such property which was involved in the offenses set forth in the Superseding Indictment against WILLIAM MICHAEL EVANS;
- b. One 1979 Bentley T2 automobile bearing vehicle identification number SBK37898;
- c. Approximately \$25,000 in United States Currency and all interest and proceeds traceable thereto, in that such sum in aggregate is property or is traceable to such property which was involved in the offenses set forth against GREGORY DAMIEN LORSON in the Superseding Indictment;

and they are hereby forfeited pursuant to Counts 19 and 20 of the Superseding Indictment to the United States for disposition according to law, subject to the provisions of 18 U.S.C. § 982;

2) That the above-described vehicle and currency are to be held by and in the custody and under the control of the United States Marshals Service;

3) If the above-described property, as a result of any act or omission of the defendants WILLIAM M. EVANS and GREGORY DAMIEN LORSON a) cannot be located upon the exercise of due diligence; b) has been transferred or sold to, or deposited with, a third party; c) has been placed beyond the jurisdiction of the court; d) has been substantially diminished in value; or e) has been commingled with other property which cannot be divided without difficulty, any other property of said defendant up to the value of the above forfeitable property shall be ordered forfeited to the United States, pursuant to 18 U.S.C. § 982. The United States may file a motion before this Court requesting the forfeiture of substitute assets of the said defendant.

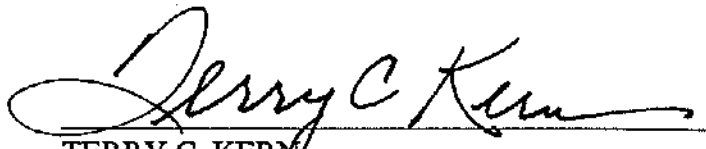
4) That pursuant to 18 U.S.C. § 982(a)(6)(B) and 21 U.S.C. § 853(n), the United States Marshal for the Northern District of Oklahoma shall forthwith publish notice of this Order once a week for three consecutive weeks in the Tulsa Daily Commerce and Legal News, Tulsa, Oklahoma, a newspaper of general circulation in the Northern District of Oklahoma setting forth therein the Marshals intent to dispose of the property in such manner as the Attorney General may direct, and that any person other than the defendants, WILLIAM MICHAEL EVANS and GREGORY DAMIEN LORSON having or claiming a legal interest in the above-described forfeited vehicle and currency must file a petition with the Court within thirty (30) days after the final publication of such notice or of receipt of actual notice, whichever is earlier.

These notices shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the above-described vehicle and currency, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title, or interest in each of the properties as well as any additional facts supporting the petitioner's claim and the relief sought.

The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the above-described vehicle and currency, which are the subject of the Order entered June 3, 1998, and of this Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

That upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture pursuant to 18 U.S.C. § 982 in which all interests will be addressed.

ORDERED this 30 day of July, 1998.

A handwritten signature in cursive script, reading "Terry C. Kern", written over a horizontal line.

TERRY C. KERN

CHIEF JUDGE OF THE DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

NAUDDALPEADENFORFEITULORSONPREL.ORD



DATE 7/31/98

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

UNITED STATES OF AMERICA

v.

Case Number 97-CR-163-002-H

TERRANCE FRANKLIN REVIS  
 Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

**FILED**

JUL 29 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, TERRANCE FRANKLIN REVIS, was represented by Kent R. Hudson.

On motion of the United States the court has dismissed Counts 1-11, 13-30 & 32-64 of the Indictment.

The defendant pleaded guilty to Count 31 of the Indictment, April 27, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

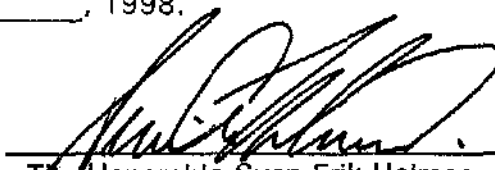
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341 & 2	Mail Fraud & Causing a Criminal Act	10/28/95	31

As pronounced on April 27, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 31 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 29<sup>th</sup> day of July, 1998.

  
 The Honorable Sven Erik Holmes  
 United States District Judge

Defendant's SSN: 527-53-1052

Defendant's Date of Birth: 1/1/75

Defendant's residence and mailing address: 919 S. Mission #8, Sapulpa OK 74066

Defendant: TERRANCE FRANKLIN REVIS  
Case Number: 97-CR-163-002-H

### PROBATION

The defendant is hereby placed on probation for a term of five (5) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of six (6) months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TERRANCE FRANKLIN REVIS  
Case Number: 97-CR-163-002-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$10,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
United States of America Department of Health & Human Services Attn: Medicare Fraud Unit Washington DC	\$10,000

{Loss sustained in connection with Revis Ambulance}

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: TERRANCE FRANKLIN REVIS  
Case Number: 97-CR-163-002-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 1,180,540.80

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason: because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

BJs

**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

JUL 29 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-57-004-B

**ENTERED ON DOCKET**STEPHEN STEWART  
Defendant.DATE 7-30-98

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, STEPHEN STEWART, was represented by GORDON S. HARMAN.

The defendant pleaded guilty to count(s) One of the Second Superseding Indictment.  
 Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 841(a)(1) 21 USC 841(b)(1) (A)(vii)	Manufacturing 1,000 or More Marijuana Plants by Cultivation, and Aiding and Abetting	01-08-96	1

As pronounced on July 27, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) One of the Second Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

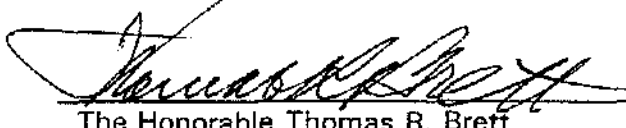
Signed this the 29<sup>th</sup> day of July, 1998.

United States District Court  
 Northern District of Oklahoma ) SS  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this court.

Phil Lombardi, Clerk

By

Deputy

  
 The Honorable Thomas R. Brett  
 United States District Judge

Defendant's SSN: 448-48-6670

Defendant's Date of Birth: 4-28-47

Defendant's residence and mailing address: 25240 S. 605 TRAIL, GROVE, OK 74344

Defendant: Stephen Stewart  
Case Number: 96-CR-57-004-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 27 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 3:00 P.M. on September 1, 1998.

**RETURN**

I have executed this Judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal  
By \_\_\_\_\_  
Deputy Marshal

Defendant: Stephen Stewart  
Case Number: 96-CR-57-004-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: Stephen Stewart  
Case Number: 96-CR-57-004-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.



Defendant: Stephen Stewart  
Case Number: 96-CR-57-004-B

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	21
Criminal History Category:	I
Imprisonment Range:	37 months to 46 months
Supervised Release Range:	5 years
Fine Range:	\$7,500 to \$ 4,000,000
Restitution:	n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range upon motion of the government, as a result of defendant's substantial assistance.

GW

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

FILED ON DOCKET  
DATE 7/30/98

v.

Case Number 97-CR-135-002-K ✓

GREGORY DAMIEN LORSON  
Defendant.

FILED

JUL 30 1998

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, GREGORY DAMIEN LORSON, was represented by John Thomas Hall.

The defendant was found guilty on Counts 1-17 of the Superseding Indictment March 11, 1998 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy to Commit Mail & Wire Fraud	9/30/96	1, 11 & 13
18 USC 1341 & 2	Mail Fraud & Aiding and Abetting	9/30/96	2-8 & 12
18 USC 1343 & 2	Wire Fraud & Aiding and Abetting	9/30/96	9, 10, 14 & 15
18 USC 1957 & 2	Money Laundering & Aiding and Abetting	11/14/95	16
18 USC 1957	Money Laundering	11/14/95	17

As pronounced on July 15, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 850, for count(s) 1-17 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30 day of July, 1998.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 440-58-4614

Defendant's Date of Birth: 4/12/57

Defendant's residence and mailing address: 2412 E. 22 Place, Tulsa, OK 74114

Defendant: GREGORY DAMIEN LORSON  
Case Number: 97-CR-135-002-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 70 months. This sentence is composed of 60 months as to each of Counts 1 through 15, and 70 months as to each of Counts 16 & 17, said terms to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed at the Bureau of Prison Facility at El Reno, Oklahoma. Should such placement not be possible, it is recommended that the defendant be placed as close as possible to Oklahoma.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on September 15, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: GREGORY DAMIEN LORSON

Case Number: 97-CR-135-002-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1-17, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
7. Without approval of the Probation Officer, the defendant is prohibited from engaging in any form of employment which would give the defendant access to bank accounts, securities, or other negotiable assets of any individual business, or other entity. In addition, you are prohibited from soliciting others to invest money or other assets for any purpose, or from assisting or advising others in the solicitation of investors.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: GREGORY DAMIEN LORSON  
Case Number: 97-CR-135-002-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$50,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
CRW Financial 200 Four Falls Corporate Center, Suite 415 West Conshohocken, Pennsylvania 19428 Attn: John Robinson	\$12,500
Chilmark Financial c/o Gotham Capital 153 E. 53rd Street 51st Floor New York, NY 10022 Attn: Ned Grier	\$37,500

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

**FORFEITURE**

The defendant is ordered to forfeit the following property to the United States:

\$25,000 in currency and a 1979 Bently T2 automobile bearing vehicle identification number SBU37898 remains pending.

Defendant: GREGORY DAMIEN LORSON  
Case Number: 97-CR-135-002-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the defendant is not accountable for \$22,500 loss to Chilmark Financial, L.L.P., concerning the Sunset Apartment Collection. 2 level offense level enhancement contained in USSG § 2F1.1(b)(3)(A) does not apply to this defendant.

**Guideline Range Determined by the Court:**

Total Offense Level:	23	
Criminal History Category:	IV	
Imprisonment Range:	70 months to 87 months	Cts. 1-17
Supervised Release Range:	2 to 3 years	Cts. 1-17
Fine Range:	\$ 10,000 to \$ 735,127.80	Cts. 1-17
Restitution:	\$ 416,217.29	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

# UNITED STATES DISTRICT COURT

## Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

WILLIAM MICHAEL EVANS  
Defendant.

Case Number 97-CR-135-001-K

ENTERED ON DOCKET  
DATE 7/30/98

**FILED**  
JUL 30 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, WILLIAM MICHAEL EVANS, was represented by Allen M. Smallwood.

The defendant was found guilty on Counts 1-16 & 18 of the Superseding Indictment on March 11, 1998 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy to Commit Mail Fraud & Wire Fraud	9/30/96	1, 11, 13
18 USC 1341 & 2	Mail Fraud & Aiding and Abetting	9/30/96	2-8 & 12
18 USC 1343 & 2	Wire Fraud & Aiding and Abetting	9/30/96	9, 10, 14 & 15
18 USC 1957 & 2	Money Laundering & Aiding and Abetting	11/14/95	16
18 USC 1957	Money Laundering	12/13/94	18

As pronounced on July 15, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 850, for Counts 1-16 & 18 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30 day of July, 1998.

*Terry C. Kern*  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 063-36-3624

Defendant's Date of Birth: 5/2/45

Defendant's residence and mailing address: 93 Northridge Terrace, Medford, Oregon 97501

Defendant: WILLIAM MICHAEL EVANS

Case Number: 97-CR-135-001-K

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 48 months. This term consists of 48 months as to each of Counts 1-16 and 18, said terms to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed at FCI Sheridan, should the defendant meet the eligibility criteria for such placement. Should the defendant not be placed at FCI Sheridan, it is recommended that he be placed at a facility as near as possible to Medford, Oregon.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 31, 1998.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
 at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
 United States Marshal

By \_\_\_\_\_  
 Deputy Marshal



Defendant: WILLIAM MICHAEL EVANS

Case Number: 97-CR-135-001-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to Counts 1-16 & 18, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant is prohibited from engaging in any form of employment which would give the defendant access to bank accounts, securities, or other negotiable assets of any individual, business, or other entity. In addition, the defendant is prohibited from soliciting others to invest money or other assets for any purpose, or from assisting or advising others in the solicitation of investors.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: WILLIAM MICHAEL EVANS

Case Number: 97-CR-135-001-K

**RESTITUTION AND FORFEITURE****RESTITUTION**

The defendant shall make restitution in the total amount of \$100,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
CRW Financial 200 Four Falls Corporate Center, Suite 415 West Conshohocken, Pennsylvania 19428 Attn: John Robinson	\$24,000
Chilmark Financial c/o Gotham Capital 153 East 53rd Street 51st Floor New York, New York 10022 Attn: Ned Grier	\$76,000

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

**FORFEITURE**

The defendant is ordered to forfeit the following property to the United States:

Forfeiture proceedings pending for all real and personal property involved in the aforementioned offense, to include \$57,500.

Defendant: WILLIAM MICHAEL EVANS  
Case Number: 97-CR-135-001-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	23	
Criminal History Category:	I	
Imprisonment Range:	46 months to 57 months	Cts. 1-16 & 18
Supervised Release Range:	2 to 3 years	Cts. 1-16 & 18
Fine Range:	\$ 10,000 to \$ 735,127.80	Cts. 1-16 & 18
Restitution:	\$ 483,717.29	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

DATE 7/29/98UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-152-001-H ✓

STEVEN LADD FRITZ  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)**FILED**  
JUL 29 1998  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, STEVEN LADD FRITZ, was represented by Michael A. Abel.

On motion of the United States the court has dismissed Counts 1-6 &amp; 8-48 of the Superseding Indictment.

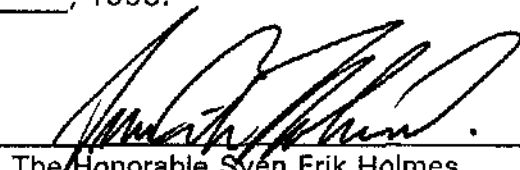
The defendant pleaded guilty to Count 7 of the Superseding Indictment, April 10, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 513(a) & 2(b)	Forged Securities, Uttering & Possession & Causing a Criminal Act	3/11/96	7

As pronounced on July 23, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 7 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 29<sup>TH</sup> day of July, 1998.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 174-48-9031

Defendant's Date of Birth: 3/31/55

Defendant's residence and mailing address: 2456 E. 26th Street, Tulsa OK 74114

Defendant: STEVEN LADD FRITZ  
Case Number: 97-CR-152-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 53 months, as to Count 7.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 24, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: STEVEN LADD FRITZ  
Case Number: 97-CR-152-001-H

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to Count 7.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: STEVEN LADD FRITZ  
Case Number: 97-CR-152-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$18,000. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Glen Berkenbile 2408 E. 72nd Place Tulsa, OK 74137	\$18,000

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: STEVEN LADD FRITZ  
Case Number: 97-CR-152-001-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	23
Criminal History Category:	I
Imprisonment Range:	46 months to 57 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 10,000 to \$ 100,000
Restitution:	\$ 148,123

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 98-CR-016-001-H

PAUL RONALD BATES  
Defendant.JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

FILED

JUL 29 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, PAUL RONALD BATES, was represented by Jack Schisler.

On motion of the United States the court has dismissed Count 1 of the Indictment.

The defendant pleaded guilty to Count 2 of the Indictment, April 3, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)(8)	Possession of a Firearm in Violation	10/5/97	2
18 USC 924(a)(2)	of a Protective Order		

As pronounced on July 16, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 29<sup>TH</sup> day of July, 1998.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 442-82-5760

Defendant's Date of Birth: 4/28/68

Defendant's Mailing Address: Rt. 1, Box 283, Beggs OK 74421

Defendant: PAUL RONALD BATES  
Case Number: 98-CR-016-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 22 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 17, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: PAUL RONALD BATES  
Case Number: 98-CR-016-001-H

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall participate in a program of domestic violence counseling, or other such treatment program as deemed appropriate, until such time as released from the program by the Probation Officer.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PAUL RONALD BATES  
Case Number: 98-CR-016-001-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 3,000, as to Count 2. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: PAUL RONALD BATES  
Case Number: 98-CR-016-001-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	13
Criminal History Category:	III
Imprisonment Range:	18 months to 24 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

DATE: 7/29/98

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

UNITED STATES OF AMERICA

v.

Case Number 98-CR-013-001-H ✓

CHRISTOPHER MICHAEL JONES  
 Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

**FILED**  
 JUL 22 1998  
 Phil Lombardi, Clerk  
 U.S. DISTRICT COURT

The defendant, CHRISTOPHER MICHAEL JONES, was represented by Cindy Hodges Cunningham.

On motion of the United States the court has dismissed Counts 1 & 5 of the Indictment.

The defendant pleaded guilty to Count 4 of the Indictment, April 3, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
8 USC 922(g)(1)	Possession of a Firearm After Former Conviction of a Felony	11/2/97	4

As pronounced on July 16, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 4 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21<sup>st</sup> day of July, 1998.

  
 The Honorable Sven Erik Holmes  
 United States District Judge

Defendant's SSN: 447-70-5780

Defendant's Date of Birth: 01/25/75

Defendant's mailing address: 1328 E. 54th Street North, Tulsa OK 74126

Defendant's residence address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant: CHRISTOPHER MICHAEL JONES  
Case Number: 98-CR-013-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 109 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate a facility that will provide Comprehensive Substance Abuse Treatment during the defendant's period of incarceration.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CHRISTOPHER MICHAEL JONES  
Case Number: 98-CR-013-001-H

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.



Defendant: CHRISTOPHER MICHAEL JONES

Case Number: 98-CR-013-001-H

**FINE**

The defendant shall pay a fine of \$ 1,500, as to Count 4. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: CHRISTOPHER MICHAEL JONES  
Case Number: 98-CR-013-001-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	24
Criminal History Category:	V
Imprisonment Range:	92 months to 115 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 12,500 to \$ 125,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

Bus

DATE 7/29/98UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 97-CR-163-003-H ✓

ROMAN YAHOLA  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)**FILED**

JUL 22 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, ROMAN YAHOLA, was represented by Martin Hart.

On motion of the United States the court has dismissed Counts 1, 2, &amp; 4-64 of the Indictment.

The defendant pleaded guilty to Count 3 of the Indictment, April 16, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341 & 2	Mail Fraud & Causing a Criminal Act	8/1/95	3

As pronounced on July 14, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21<sup>st</sup> day of JULY, 1998.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 447-52-2068

Defendant's Date of Birth: 6/21/53

Defendant's residence and mailing address: 108 A Fus Cate, Okemah, OK 74859

Defendant: ROMAN YAHOLA  
Case Number: 97-CR-163-003-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the El Reno Camp as the place of incarceration for this defendant.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 14, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: ROMAN YAHOLA  
Case Number: 97-CR-163-003-H

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ROMAN YAHOLA  
Case Number: 97-CR-163-003-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,600. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
United States of America Department of Health & Human Services Attn: Medicare Fraud Washington D.C.	\$3,600

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: ROMAN YAHOLA  
Case Number: 97-CR-163-003-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	V
Imprisonment Range:	21 months to 27 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 1,180,540.80

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

Ed: 7-23-98

UNITED STATES OF AMERICA

v.

Case Number 97-CR-173-001-K ✓

JAMES FRANCIS WARNER JR.  
Defendant.

FILED

JUL 23 1998

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, James Francis Warner Jr., was represented by Stephen J. Knorr.

The defendant pleaded guilty to Counts 1, 2 & 3 of the Indictment, April 16, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy to Travel Interstate to Aid in a Racketeering Enterprise	6/1/97	1
18 USC 1952(a)(3) & 2(a)	Interstate Travel in Aid of Racketeering & Aiding and Abetting	11/11/96	2
18 USC 1952(a)(3) & 2(a)	Interstate Travel in Aid of Racketeering & Aiding and Abetting	11/26/96	3

As pronounced on July 16, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 300, for Counts 1, 2 & 3 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of July, 1998.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 446-52-7664

Defendant's Date of Birth: 02/07/50

Defendant's residence and mailing address: 1435 1/2 S. Peoria Avenue, Tulsa OK 74120



Defendant: JAMES FRANCIS WARNER JR.  
Case Number: 97-CR-173-001-K

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months, as to each of Counts 1, 2 & 3. Said terms to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant receive Comprehensive Drug Treatment while in custody.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 17, 1998.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: JAMES FRANCIS WARNER JR.  
Case Number: 97-CR-173-001-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to each of Counts 1, 2 & 3. Said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES FRANCIS WARNER JR.  
Case Number: 97-CR-173-001-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JAMES FRANCIS WARNER JR.  
Case Number: 97-CR-173-001-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	12	
Criminal History Category:	II	
Imprisonment Range:	12 months to 18 months	Cts. 1, 2 & 3
Supervised Release Range:	2 to 3 years	Cts. 1, 2, & 3
Fine Range:	\$ 3,000 to \$ 30,000	Cts. 1, 2, & 3
Restitution:	\$ n/a	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

EOD!  
7-23-98

UNITED STATES OF AMERICA

v.

Case Number 98-CR-019-001-K ✓

FRANCIS XAVIER FISHER  
Defendant.

FILED

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

23 1998  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, FRANCIS XAVIER FISHER, was represented by Ronald L. Daniels.

The defendant pleaded guilty to Count 1 of the Indictment, April 21, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 922(g)(1)	Possession of a Firearm After Former Conviction of a Felony	1/17/98	1

As pronounced on July 16, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 22 day of July, 1998.

  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 496-60-6152

Defendant's Date of Birth: 6/21/54

Defendant's residence and mailing address: 4901 S. Quaker Avenue, Tulsa OK 74105

Defendant: FRANCIS XAVIER FISHER  
Case Number: 98-CR-019-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the Turley Correctional Center as the place of incarceration.

The defendant shall surrender to the designated institution by 12:00 noon on August 17, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: FRANCIS XAVIER FISHER  
Case Number: 98-CR-019-001-K

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of five (5) months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: FRANCIS XAVIER FISHER  
Case Number: 98-CR-019-001-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.



Defendant: FRANCIS XAVIER FISHER  
Case Number: 98-CR-019-001-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 30,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 17 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA  
Plaintiff

VS

CHARLES WAYNE EASKY  
Defendant

Case Number 96-CR-022-001-B

ENTERED ON DOCKET

DATE JUL 20 1998

ORDER REVOKING SUPERVISED RELEASE

Now on this 12th day of June 1998, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on September 23, 1997. The defendant is present in person and represented by counsel, Stephen J. Knorr. The Government is represented by Assistant United States Attorney, F.L. Dunn, III, and the United States Probation Office is represented by David Plunkett.

On November 5, 1997, a Revocation Hearing was held regarding the allegation noted in the Petition on Supervised Release, said allegation being that a urine specimen collected on September 8, 1997, tested positive for amphetamine/methamphetamine. During the Revocation Hearing, the defendant stipulated to the violation as alleged in the Petition. The Court found that the defendant was in violation of the conditions of his release and supervised release was revoked. The Court passed sentencing to May 15, 1998. On April 26, 1998, Easky submitted to urinalysis that tested positive for amphetamine/methamphetamine and the Court rescheduled the hearing for June 12, 1998. On this date, the Court proceeded with sentencing and found that the conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violation of supervised release constituted a Grade C violation in accordance with

11

USSG § 7B1.1(a)(3), and the defendant's Criminal History Category of I is applicable for determining the imprisonment range. In addition, the Court found that a Grade C violation and a Criminal History Category of I establish a revocation imprisonment range of three (3) to nine (9) months in accordance with USSG § 7B1.4(a) and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

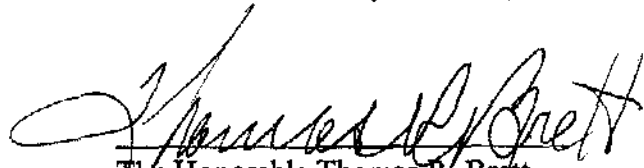
It is the judgment of the Court that the defendant, Charles Wayne Easky, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of eighteen (18) months. The Court recommends that, classification provisions permitting, the defendant be confined in a facility capable of providing the 500 hour comprehensive substance abuse treatment.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of eighteen (18) months. Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which he is released. While on supervised release, the defendant shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following additional conditions:

1. The defendant shall not own or possess a firearm or destructive device.
2. The defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as he is released from the program by the probation officer.

3. The defendant shall abide by the Special Search and Seizure Condition as enumerated in Miscellaneous Order M-128, filed with the Clerk of the Court on May 25, 1995.

The defendant shall remain free on community supervision under the same rules and conditions of supervision with home confinement to include electronic monitoring, and shall report to the facility of designation as determined by the Bureau of Prisons on July 20, 1998, at 11:00 a.m.

A handwritten signature in black ink, appearing to read "Thomas R. Brett", is written over a horizontal line.

The Honorable Thomas R. Brett  
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**  
NORTHERN DISTRICT OF OKLAHOMA

JUL 16 1998

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BALDOMERO REYES, )  
 )  
Defendant. )

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

No. 98-CR-81-C


ENTERED ON DOCKET

DATE 7-17-98

ORDER OF DISMISSAL

It is hereby **ORDERED, ADJUDGED, and DECREED**, that based upon the government's Motion and to best meet the ends of justice, defendant BALDOMERO REYES is dismissed as a defendant from Case No. 98-CR-81-C.

IT IS SO ORDERED.

  
H. DALE COOK  
United States District Judge

FILED

JUL 16 1998

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA )

vs. )

) Docket No. 93-CR-152-001-E ✓

Danny William Murphy )

ENTERED ON DOCKET

DATE 7-16-98

ORDER REVOKING SUPERVISED RELEASE

Now on this 16th day of July, 1998, this cause comes on for sentencing after the Court found that the defendant had violated the conditions of Supervised Release as alleged in the Amended Petition on Supervised Release filed on May 27, 1998. Murphy is present in person and represented by counsel, Stephen Knorr. The Government is represented by Assistant United States Attorney Charles McLoughlin, and the United States Probation Office is represented by Robert E. Boston. Heretofore, on the 11th day of February, 1994, the defendant, Danny William Murphy, was sentenced to a 21 month term of imprisonment followed by a three year term of supervised release after pleading guilty to Possession of Stolen Mail, in violation of Title 18, USC, § 1708.

On May 27, 1998, Senior U.S. Probation Officer Robert E. Boston filed an Amended Petition on Supervised Release alleging that the defendant had violated the conditions of Supervised Release in that he had:

- (1). Failed to report to the probation office in the district to which he was released within 72 hours of release from the custody of the Bureau of Prisons;

United States District Court  
Northern District of Oklahoma } SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk

By Deputy

(2). Assaulted John Earl Patrick and Nicole Sheree Jones; and

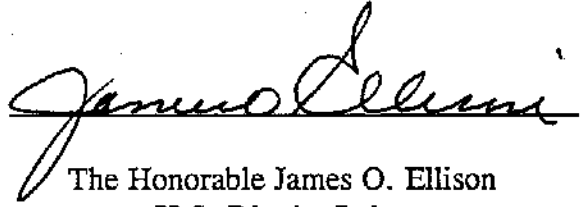
(3). Committed the crimes of Forgery and Uttering a Forged Instrument in Galesburg, Knox County, Illinois.

At a Supervised Release Revocation Hearing held on July 16, 1998, the defendant stipulated to the allegations in the Amended Petition on Supervised Release filed on May 27, 1998.

The Court hereby finds that the defendant violated the terms and conditions of supervised release and orders that the defendant's supervised release term be revoked. Further, the Court finds that, pursuant to the Sentencing Reform Act of 1984, the violations as noted in the Petition on Supervised Release occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court finds that the violations of supervised release constitute a Grade B violation in accordance with U.S.S.G. § 7B1.1(a)(2), and that the defendant's original Criminal History Category of VI is applicable for determining the imprisonment range. In addition, the Court finds that a Grade B violation and a Criminal History Category of VI establish a revocation imprisonment range of 21 to 24 months in accordance with U.S.S.G § 7B1.4(a) and 7B1.4(b)(3)(A), and 18 U.S.C. § 3583(e). In consideration of these findings and pursuant to U.S. vs. Lee, 957 F 2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Danny William Murphy, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 24 months. The defendant shall pay restitution in the amount of \$825.00 to Rosehill State Bank as ordered in the original Judgment and Commitment Order.

The defendant is remanded to the custody of the United States Marshal.

A handwritten signature in black ink, appearing to read "James O. Ellison". The signature is written in a cursive, flowing style with a prominent initial "J".

The Honorable James O. Ellison  
U.S. District Judge



**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

JUL 14 1998 *ml*

Phil Lombardi, Clerk  
 U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 97-CR-086-001-BU

ANTHONY LEE SPENCER  
 Defendant.

**ENTERED ON DOCKET****DATE 7-15-98**

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

The defendant, ANTHONY LEE SPENCER, was represented by Allen M. Smallwood.

The defendant pleaded guilty to Counts 1-37 of the Indictment, January 23, 1998. Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy, Defraud the United States, the Internal Revenue Service, by Aiding and Assisting in, and Procuring, Counseling, and Advising the Preparation and Presentation of False and Fraudulent Federal Income and Employment Tax Returns	5/24/95	1
6 USC 7206(2)	Aiding and Assisting in, and Procuring, Counseling, and Advising the Preparation of False Income Tax Returns	2/3/95	2-32
26 USC 7206(1)	Subscribing False U.S. Corporation Income Tax Return	8/2/93	33
26 USC 7206(1)	Subscribing False U.S. Individual Federal Income Tax Returns	10/18/95	34-37

As pronounced on June 30, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 1,850, for Counts 1-37 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14 day of July, 1998.

United States District Court  
 Northern District of Oklahoma  
 I hereby certify that the foregoing is a true copy of the original on file in this court.

Phil Lombardi, Clerk

Deputy

*Michael Burrage*  
 The Honorable Michael Burrage  
 United States District Judge

Defendant's SSN: 429-90-1374

Defendant's Date of Birth: 12/2/47

Defendant's residence and mailing address: 4403 S. 61st West Avenue, Tulsa OK 74107

Defendant: ANTHONY LEE SPENCER  
Case Number: 97-CR-086-001-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 63 months; 60 months as to Count 1, 3 months on each of Counts 2-37. Counts 2-37 shall run concurrently, each with the other, but consecutive to Count 1. Therefore, the total term of imprisonment is 63 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the place of incarceration in a facility as close as possible to the defendant's home. Specifically, the Court recommends El Reno FCI for the place of incarceration.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on August 28, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: ANTHONY LEE SPENCER  
Case Number: 97-CR-086-001-BU

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to Count 1, and one (1) year as to each of Counts 2-37. All counts shall run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. While on supervised release, should the Internal Revenue Service determine the amount of any delinquent tax and applicable penalties owed by the defendant, such amounts should be paid by the defendant in accordance with any schedule set by the IRS or agreed upon by the defendant and the Internal Revenue Service.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ANTHONY LEE SPENCER  
Case Number: 97-CR-086-001-BU

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 12,500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

The defendant shall pay the cost of prosecution totaling \$16,944.83. Interest on the cost of prosecution is waived by the Court.

Defendant: ANTHONY LEE SPENCER  
Case Number: 97-CR-086-001-BU

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report, except the Court rejects a reduction for Acceptance of Responsibility because the defendant has not clearly demonstrated personal responsibility for these offenses. He has denied much of his criminal conduct, blamed others for his legal problems and this case is not an extraordinary case that warrants both the Acceptance of Responsibility reduction and increase for Obstruction of Justice.

**Guideline Range Determined by the Court:**

Total Offense Level:	26	
Criminal History Category:	I	
Imprisonment Range:	63 months to 78 months	Cts. 1-37
Supervised Release Range:	2 to 3 years	Ct. 1
	1 year	Cts. 2-37
Fine Range:	\$ 12,500 to \$ 125,000	Cts. 1-37
Restitution:	\$ n/a	

Full restitution is not ordered for the following reason(s): the exact tax loss has not been determined by the Internal Revenue Service.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 13 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GAIUS GRACCHUS GETER,  
aka, "G,"

Defendant.

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

No.95-CR-148-C

98C-453-C(e)

ENTERED ON DOCKET

DATE 7-15-98

ORDER

Currently pending before the Court is defendant Gaius Gracchus Geter's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255.

Upon reviewing Geter's motion and the record in this case, it appears that Geter's motion is time barred. In 1996, the Antiterrorism and Death Penalty Act ("ADPA") amended section 2255 by adding a one-year time limit, after a defendant's sentence becomes final, within which a section 2255 motion must be filed. U.S. v. Simmonds, 111 F.3d 737, 744 (10th Cir. 1997). Accordingly, a defendant whose conviction became final after the ADPA's effective date, April 24, 1996, must file a section 2255 motion prior to the expiration of the one-year limit or the motion is time barred. Id. at 744-45.

In the case at bar, the Judgment in a Criminal Case was entered on January 29, 1997, and Geter failed to file a notice of appeal within 10 days as required by Rule 4(b) of the Federal Rules of Appellate Procedure. Consequently, Geter waived his right of appeal, and his judgment became final 10 days after the entry of judgment: February 10, 1997. However, Geter did not file his

156

section 2255 motion until, June 28, 1998, which is well after the one-year window in which to file had closed. Hence, the Court finds Geter's section 2255 motion time barred.

Accordingly, Geter's motion seeking to set aside, or correct sentence, pursuant to 18 U.S.C. § 2255, is hereby DENIED.

IT IS SO ORDERED this 13<sup>th</sup> day of July, 1998.



H. DALE COOK

Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 14 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VERNARD WHITFIELD,

Defendant.

Case Nos. 96-CR-91-BU  
97-CV-854-BU

ENTERED ON DOCKET

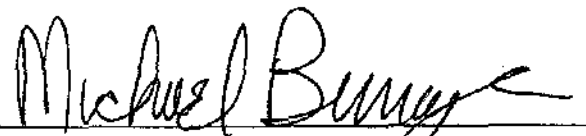
DATE 7-15-98

**JUDGMENT**

This matter came before the Court upon Defendant's Motion to Vacate, Set Aside or Correct Sentence and the issues have been duly considered and a ruling having been duly rendered,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Plaintiff, United States of America, and against Defendant, Vernard Whitfield.

DATED at Tulsa, Oklahoma, this 14<sup>th</sup> day of July, 1998.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

54



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JUL 14 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERALD MARSHAL PAYNE,

Defendant.

Case Nos. 94-CR-150-BU  
97-CV-393-BU

ENTERED ON DOCKET


DATE 7-15-98

## JUDGMENT

This matter came before the Court upon Defendant's Motion to Vacate, Set Aside or Correct Sentence and the issues have been duly considered and a ruling having been duly rendered,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Plaintiff, United States of America, and against Defendant, Gerald Marshal Payne.

DATED at Tulsa, Oklahoma, this 14 day of July, 1998.

  
MICHAEL BURRAGE  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUL 13 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD LEE POWERS,

Defendant.

No. 91-CR-23-2-E ✓  
(97-CV-486-E)

ENTERED ON DOCKET

DATE 7-14-98

**ORDER**

Before the Court is the Defendant Donald Lee Powers' motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #114). The Plaintiff United States of America has filed its response brief (#115). Defendant has also filed motions to stay § 2255 proceedings (#116) and to proceed *pro se* and to amend 2255 (#118).

**BACKGROUND**

In count one of a two-count superseding indictment filed October 3, 1991, Defendant and co-defendant Joe Earl Rodgers were charged with conspiracy to distribute five kilograms or more of cocaine, in violation of 18 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(ii). Defendant was convicted after a jury trial and was sentenced to 151 months, to be followed by five years of supervised release.

Defendant appealed, and the Court of Appeals for the Tenth Circuit affirmed Defendant's conviction and sentence. United States v. Rodgers, 1993 WL 181443, No. 92-5029, No. 5049 (10<sup>th</sup> Cir. May 26, 1993).

On November 30, 1994, Defendant proceeding *pro se* filed a motion to modify his term of imprisonment pursuant to 18 U.S.C. § 3582(c) (#86). Defendant argued that his sentence should be modified under 18 U.S.C. § 3553(f), newly enacted as part of the Violent Crime Control and

131

Enforcement Act of 1994 as a "safety valve" to provide relief from the mandatory sentencing minimums for defendants who meet specified criteria. The Court, after allowing the government to respond, denied Defendant's motion on the basis that he did not meet § 3553's criteria for relief (#88).<sup>1</sup>

On May 20, 1997, Defendant through retained counsel filed this § 2255 motion raising the sole issue that his sentence was improperly enhanced for possession of firearms under the United States Sentencing Guidelines contrary to the decision in Bailey v. United States, 516 U.S. 137 (1995). The government responded on July 2, 1997 that the motion was untimely because it was filed outside the one-year time limitation established by § 2255, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"). Alternatively, the government asserts that the issue raised in Defendant's § 2255 motion lacks merit. Defense counsel filed no reply to the government's response raising the issue of untimeliness.

On July 7, 1997, Defendant acting *pro se* moved to stay the § 2255 proceedings to allow him to dismiss his retained attorney and proceed *pro se*. Defendant contends that his retained attorney, C. Rabon Martin, did not raise the issues he requested, namely the denial of his allocution rights at sentencing and the improper determination of relevant conduct. Defendant alleges that his mother retained Martin on April 9, 1997 and gave him research material compiled by Defendant on the above two issues. Defendant also alleges that he wrote a letter to Martin on April 11, 1997 including additional material and expressing his understanding that the AEDPA imposed a deadline of April 23 for the filing of the motion. Defendant further alleges that his mother's attempts to communicate with

---

<sup>1</sup> Defendant's motion for sentence reduction was not considered a collateral attack under § 2255. See United States v. Smartt, 129 F.3d 539, 540 (10<sup>th</sup> Cir. 1997). Thus, the Court need not determine whether Defendant's instant § 2255 motion is a "second or successive" motion pursuant to the amended provisions of § 2255.

Martin by telephone or at his office during May, 1997 were unsuccessful, and that his mother received a copy of the § 2255 motion filed in this Court around June 14, which she forwarded to Defendant.

On February 2, 1998, Defendant filed a motion for leave to proceed *pro se* and to amend his § 2255 motion to raise the denial of allocution rights and the determination of relevant conduct.

### **ANALYSIS**

The government has raised the issue that Defendant's motion is time-barred because it was not filed until May 20, 1997, some twenty-seven days after the statute of limitations had elapsed. Prior to the enactment of the AEDPA on April 24, 1996, § 2255 contained no statute of limitations. The AEDPA amended 28 U.S.C. § 2255 by adding a time-limit provision. Specifically, 28 U.S.C. § 2255 now provides:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the fact supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In United States v. Simmonds, 111 F.3d 737, 746 (10<sup>th</sup> Cir. 1997), the Tenth Circuit held that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions

before April 24, 1997.” In so doing the Tenth Circuit allowed these prisoners a grace period of one year after the AEDPA’s enactment within which to file their § 2255 motions.

Defendant’s conviction and sentence were affirmed on appeal on May 26, 1993. His conviction became final ninety days after the entry of that appellate judgment. See Griffeth v. Kentucky, 479 U.S. 314 (1987). Thus, there is no question that Defendant’s conviction became final before April 24, 1996. Pursuant to Simmonds, Defendant had until April 23, 1997 to file his motion. However, it is uncontroverted that Defendant’s retained counsel did not file the § 2255 motion until May 20, 1997. Thus, Defendant’s motion is clearly untimely.

Defendant seems to suggest in his motions to stay proceedings and to proceed *pro se* that his untimeliness should be excused because he advised his attorney in mid-April that the deadline was looming, and that the failure to file the motion by the deadline was entirely due to his attorney’s negligence. While the imposition of the statute of limitations may seem harsh in that it forecloses review of Defendant’s motion on its merits, such was the intent of Congress when it enacted the limitations period. This Court is without authority to excuse Defendant’s untimely filing based upon the circumstances presented here.

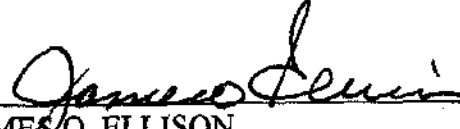
In several unpublished opinions, the Tenth Circuit has consistently upheld the dismissal of § 2255 motions that are filed even one day after the April 23, 1997 statute of limitations. See, e.g., United States v. Hutchinson, 1998 WL 94600, Nos. 97-6259 and 6264 (10<sup>th</sup> Cir. Mar. 5, 1998) (§ 2255 motions filed on April 24, 1997); United States v. Daniels, 1998 WL 141992, No. 97-6196 (10<sup>th</sup> Cir. Mar. 30, 1998) (§ 2255 motion mailed April 28, 1997). These decisions demonstrate the Tenth Circuit’s intention to enforce strictly the statute of limitations with respect to late-filed § 2255 motions.

This case is distinguishable from one in which a defendant claims to have given his motion to prison authorities for mailing before the April 24, 1997 deadline only to have it arrive at the Court some days or weeks later. Under those circumstances, a court may properly invoke the "mailbox rule" of Houston v. Lack, 487 U.S. 266 (1988) to consider the motion filed on the date given to the prison authorities. See Burns v. Morton, 134 F.3d 109 (3rd Cir. 1998) (applying mailbox rule to filing of habeas petitions pursuant to 28 U.S.C. § 2254). The mailbox rule is clearly inapplicable, however, under the instant circumstances. Defendant was represented by counsel who filed the § 2255 motion on May 20, 1997. The certificate of service attached to the motion indicates that a copy was mailed to the U.S. Attorney's office on May 21, 1997.

Therefore, because Defendant's § 2255 motion was not filed before April 24, 1997, Defendant's motion must be dismissed as untimely pursuant to the authority of § 2255, as amended by the AEDPA.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket #107) is **dismissed with prejudice** as time-barred. Defendant's motions to stay § 2255 proceedings (#116) and to proceed *pro se* and to amend 2255 (#118) are **denied** as moot, as is any other pending motion.

SO ORDERED THIS 13<sup>th</sup> day of July, 1998.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 13 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD LEE POWERS,

Defendant.

No. 91-CR-23-1-E  
(97-CV-486-E)

ENTERED ON DOCKET

DATE 7-14-98

**JUDGMENT**

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 13<sup>th</sup> day of July, 1998.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

129

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE EARL RODGERS,

Defendant.

**FILED**

JUL 13 1998

No. 91-CR-23-1-E  
(96-CV-1068-E)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 7-14-98

**ORDER**

Before the Court is the *pro se* Defendant Joe Earl Rodger's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #107). The Plaintiff United States of America has filed its response brief (#112) and Defendant has filed a reply to that response (#113). After reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the motion lacks merit and should be denied.

**BACKGROUND**

In count one of a two-count superseding indictment filed October 3, 1991, Defendant and co-defendant Donald Lee Powers were charged with conspiracy to distribute five kilograms or more of cocaine, in violation of 18 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(ii). Count two charged Defendant with the use or carrying of a firearm (a .44 caliber Smith and Wesson magnum revolver) during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c). Defendant was convicted of both counts after a jury trial and was sentenced to a \$10,000 fine and a total of 260 months, to be followed by five years of supervised release.

123



Defendant appealed, raising nine issues. The Court of Appeals for the Tenth Circuit affirmed Defendant's conviction and sentence. United States v. Rodgers, 1993 WL 181443, No. 92-5029 (10<sup>th</sup> Cir. May 26, 1993). The United States Supreme Court denied certiorari. Rodgers v. United States, 510 U.S. 903 (1993).

On November 26, 1996, Defendant filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, raising these grounds for relief:

1. Trial counsel provided ineffective assistance by failing to object to improper jury instructions which did not require that the jury find "interdependency" as an essential element of the conspiracy charge;
2. Trial counsel provided ineffective assistance by failing to object to the use of drug addicts' statements to estimate the quantity of drugs at sentencing; and
3. The trial court erred in allowing the jury to return a verdict of guilty on count two, because there was insufficient evidence to support a finding that Defendant used or carried a firearm within the meaning of Bailey v. United States, 516 U.S. 137 (1995).

In its response, the government first discussed the procedural bar doctrine but did not assert that a procedural bar should be imposed as to any of Defendant's claims in this instant § 2255 motion. Instead, the government addressed the merits of Defendant's claims and contended that each was without merit.

### **ANALYSIS**

As a preliminary matter, the Court notes that on January 3, 1997, prior to this Court's order directing the government to respond to Defendant's § 2255 motion, Defendant filed a "motion for leave to traverse the government's answer to his section 2255 motion to vacate, set aside, or correct

sentence by a person in federal custody." (#110). Defendant filed his reply to the government's response on April 17, 1997; therefore, his motion for leave to traverse should be denied as moot.

**A. Counsel's failure to object to jury instructions.**

Defendant contends that his trial counsel erred in failing to object to the jury instructions because the instructions relating to the conspiracy charge improperly did not require a finding that the co-conspirators were "interdependent." Defendant asserts that interdependency is an essential element of the crime of conspiracy and that his counsel's failure to object to the instructions requires reversal of his conviction.

The government concedes that the term "interdependency" is not used in the jury instructions. However, the government asserts that the instruction as to participation in the conspiracy "fully defines the essence of the requirements for interdependency even though it does not use that same term." (#112 at 6). Further, the government alleges that Defendant was not prejudiced by counsel's failure to object, even if error, because the evidence strongly demonstrates that the co-conspirators were interdependent.

To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient

to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Strickland, 466 U.S. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

A defendant challenging jury instructions must show that any erroneous instructions in themselves "so infected the entire trial that the resulting conviction violates due process." Estelle v. McGuire, 502 U.S. 62, 72 (1991) (quoting Cupp v. Naughten, 414 U.S. 141 (1973)). Defendant fails to persuade the Court that the jury instructions were incomplete or contained mistakes that infected the entire trial with "error of constitutional dimensions." United States v. Frady, 456 U.S. 152, 170 (1982). The Court's review of the jury instructions with respect to the definition of a conspiracy (#58) reveals that they accurately state the essential elements of a conspiracy. Further, it is clear that Defendant was not prejudiced by counsel's failure, if error, to object to the jury instructions, as the Tenth Circuit found on appeal that the evidence was sufficient to convict Defendant. Rodgers, 1993 WL 181445, at \*6. Thus, Defendant has not established that the alleged error by trial counsel prejudiced him, and his claim of ineffective assistance of counsel must fail.

**B. Counsel's failure to object to use of drug addicts' testimony concerning drug quantities.**

Defendant asserts that the drug quantity used by the Court at sentencing was based on evidence provided by admitted drug addicts, whose testimony was "weak at best." (#107 at 10).

Defendant contends that the Court described one witness as "zonked out," and he claims that these witnesses' testimony did not possess sufficient indicia of reliability to be relied upon for sentencing purposes. Defendant argues that his sentence should have been based only on the quantity of cocaine in his possession at the time he was arrested (i.e., one quarter gram), which would have yielded a much lesser sentence.

The government responds that defense counsel did not err in failing to object on this ground, because a witness' drug abuse does not render him incompetent to testify, rather, any inconsistencies in a witness' testimony would be weighed by the Court in assessing credibility. Further, the government asserts that the Court relied for sentencing purposes on the testimony of two unindicted co-conspirators and a police officer in addition to the government informant, Edward Farner, the witness whom Defendant complains was "zonked out."

For sentencing purposes, a defendant is accountable for drug quantities associated with a conspiracy provided that such quantities were within the scope of, and reasonably foreseeable in connection with, the criminal activity he jointly agreed to undertake with his coconspirators. United States Sentencing Guidelines ("U.S.S.G.") § 1B1.3, comment. (n. 1) (illus. e) (1990); see generally, United States v. Reid, 911 F.2d 1456, 1462 (10<sup>th</sup> Cir. 1990). Ample evidence was presented at trial to support the Probation Officer's determination of the quantity of drugs attributable to Defendant for purposes of the presentence report, which the Court adopted in the absence of any objections by defense counsel. The fact that the majority of evidence concerning drug quantities came from admitted drug users does not in itself render such evidence unreliable.

Defendant made a similar argument on appeal, when he argued that the testimony of Farner and government witnesses Roger Smith and Keva Clayton, all of whom admitting using cocaine, was

perjured. The Tenth Circuit held that the evidence was sufficient to convict Defendant even though some of the witnesses may have testified inconsistently, and that it was the jury's role to scrutinize their credibility. Rodgers, 1993 WL 181443, at \*6.

The same rationale supports the use of these witnesses' testimony for sentencing purposes. Defense counsel cross examined each government witness as to the effect drug use had upon his or her ability to remember accurately events during the relevant time period. (See, e.g., Tr. of Jury Trial at 74-84). A review of the record demonstrates that the drug quantity used for sentencing purposes clearly was supported by a preponderance of the evidence. Reid, 911 F.2d at 1462 (citing United States v. Walton, 908 F.2d 1289, 1300-03 (6th Cir.1990)). Accordingly, defense counsel did not err in failing to object to the use of drug addicts' testimony to estimate drug quantities for sentencing purposes, and Defendant's claim of ineffective assistance of counsel is without merit.

**C. Sufficiency of the evidence to support conviction for "use or carrying" of firearm.**

Defendant alleges that there was insufficient evidence that he "used" or actively employed a firearm as required by the decision in Bailey, 516 U.S. 137 (1995). Further, Defendant alleges that there was no proof that he "carried" the firearm, and in fact, at the time he was arrested, the firearm in question was located three miles away in an apartment.

In response, the government points out that the indictment charged Defendant with the use or carrying of a firearm in connection with drug trafficking, and three witnesses testified at trial that Defendant carried the firearm in question and had it on his person when distributions of cocaine were made. Thus, the government asserts, there was ample evidence to support Defendant's conviction for carrying a firearm in relation to his drug trafficking activities.

In the Bailey decision,<sup>1</sup> the United States Supreme Court held that "use" of a firearm for purposes of § 924(c) required more than a showing of mere possession by a defendant; rather, the Court held, there must be evidence that the defendant "actively employed" the firearm. Bailey, 516 U.S. at 145. The Court stated that examples of such "active employment" included brandishing, displaying or striking with the firearm. Id. at 508. However, the Supreme Court did not define the term "carry" other than to note that it was not synonymous with "using" a firearm with the meaning of § 924 (c).

Here, Defendant was charged in count two with the use or carrying of a firearm during and in relation to the drug trafficking crimes. (#34 at 5). Eddie Farner testified that Defendant carried a .44 magnum revolver in a shoulder holster as he conducted his drug activities. (Tr. of Jury Trial at 37-38). The Court concludes that this uncontradicted evidence supports the jury's verdict that Defendant carried a firearm in connection with his drug trafficking activities in violation of § 924(c).

This conclusion is also supported by the Tenth Circuit's opinion on direct appeal. Defendant had argued on appeal that the trial court erred in refusing to give a requested instruction which defined the word "firearm." The Tenth Circuit held that the trial court did not abuse its discretion in refusing to include that instruction, and noted that "[t]he record shows ample circumstantial evidence that Rodgers carried and used the firearm during his drug dealings." Rodgers, 1993 WL 181443, at \*7. Although the Tenth Circuit's decision preceded Bailey's clarification of the "use" prong of § 924(c), its holding as to the "carrying" prong is unaffected by Bailey. Accordingly, the

---

<sup>1</sup>The Tenth Circuit has held that Bailey applies retroactively. See United States v. Barnhardt, 93 F.3d 706, 708 (10th Cir. 1996).

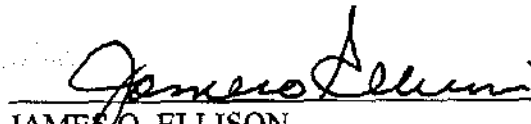
Court concludes that the jury's verdict on count two was supported by sufficient evidence, and Defendant's claim to the contrary is without merit.

**CONCLUSION**

Defendant's claims of ineffective assistance of counsel and insufficiency of evidence supporting his conviction on count two are without merit.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket #107) is **denied**. Defendant's motion for leave to traverse the government's answer (#110) is **denied** as moot.

SO ORDERED THIS 13<sup>th</sup> day of July, 1998.

  
\_\_\_\_\_  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 13 1998

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE EARL RODGERS,

Defendant.

No. 91-CR-23-1-E ✓  
(96-CV-1068-E)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ENTERED ON DOCKET


DATE 7-14-98

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 13<sup>th</sup> day of July, 1998.

  
JAMES O. ELLISON  
UNITED STATES DISTRICT JUDGE

124



UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 13 1998

UNITED STATES OF AMERICA  
Plaintiff

VS

VINCENT LEDON MOORE  
Defendant

Case Number 93-CR-096-001-C

ENTERED ON DOCKET

DATE 7/14/98

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

ORDER REVOKING SUPERVISED RELEASE

Now on this 7th day of July 1998, this cause comes on for sentencing upon the defendant's stipulation to allegations that Moore violated conditions of supervised release as set out in the Petition on Supervised Release filed on May 11, 1998. Moore is present in person and represented by counsel, Robert Nigh. The Government is represented by Assistant United States Attorney, Allen Litchfield, and the United States Probation Office is represented by Belinda Ashley.

The Court finds that Moore was in violation of the conditions of his release and supervised release is revoked. The Court finds that the offense of conviction occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violation of supervised release constituted a Grade A violation in accordance with USSG § 7B1.1(a)(1), and Moore's Criminal History Category of IV is applicable for determining the imprisonment range. In addition, the Court finds that a Grade A violation and a Criminal History Category of IV establish a revocation imprisonment sentence of twenty-four months in accordance with USSG §§ 7B1.4(a) and (b)(3)(A). In consideration of these findings and pursuant to U.S. vs. Lee, 757 F.2d 770 (10th Cir. 1992), in which the circuit determined that the policy statements in

United States District Court  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk  
By Bao M. Cullough  
Deputy

Chapter 7 were not mandatory, but must be considered by the Court, the following sentence is ordered:

It is the judgment of the Court that the defendant, Vincent Ledon Moore, is hereby committed to the custody of the U.S. Bureau of Prisons to be imprisoned for a term of eight (8) months. It is recommended that Moore be placed in a secure Bureau of Prisons facility that offers substance abuse treatment. Specifically, it is recommended that the Bureau of Prison not designate a community based facility as a place of confinement.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of twenty-eight (28) months. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this Court, and shall comply with the following special conditions:

1. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the U.S. Probation Officer, until such time as released from the program by the Probation Officer.
2. The defendant shall submit to a search conducted by a United States Probation Officer of the person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. You shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition, and without having obtained written acknowledgment of an agreement to allow such searches from other residents. This acknowledgment shall be provided to the U.S. Probation Office prior to residency.

The defendant is ordered released under the standard conditions of supervised release pending his voluntary surrender to the designated institution on August 10, 1998, at 9:00 a.m.



The Honorable H. Dale Cook  
United States District Judge

aw

**FILED**

JUL 13 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

UNITED STATES OF AMERICA

v.

Case Number 98-CR-014-001-C

DEREK WAYNE LOPP  
Defendant.**ENTERED ON DOCKET**DATE 7/13/98

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, DEREK WAYNE LOPP, was represented by Jack Schisler.

The defendant pleaded guilty to Count 1 of the Indictment, March 22, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 656	Misapplication of Bank Funds	10/31/97	1

As pronounced on July 7, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13<sup>th</sup> day of July, 1998.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 448-70-3714

Defendant's Date of Birth: 05/08/65

Defendant's mailing address: PO Box 295, Haskell, OK 74436

Defendant's residence address: 406 S. Choctaw, Haskell, OK 74436

United States District Court }  
Northern District of Oklahoma } ss  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk  
By Beau McLaughlin  
Deputy

Defendant: DEREK WAYNE LOPP  
Case Number: 98-CR-014-001-C

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 4 months.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the Turley Community Sanction Center, Tulsa, Oklahoma, as the place of confinement.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on August 10, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: DEREK WAYNE LOPP  
Case Number: 98-CR-014-001-C

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring for a period of four (4) months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DEREK WAYNE LOPP  
Case Number: 98-CR-014-001-C

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$9,753.26. Interest on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Citizen's Bank of Tulsa PO Box 27127 Tulsa, OK 74149	9,753.26

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: DEREK WAYNE LOPP  
Case Number: 98-CR-014-001-C

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	11
Criminal History Category:	I
Imprisonment Range:	8 months to 14 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 2,000 to \$ 1,000,000
Restitution:	\$ 9,753.26

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 7 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM HUGH FLEMING,

Defendant.

Case No. 91-CR-168-E  
96-C-1044-E

ENTERED ON DOCKET

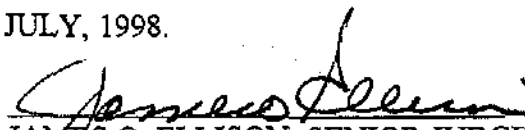
DATE 7/10/98

ORDER

Now before the Court is the Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. §2255 (docket #144), of the Defendant William Hugh Fleming. In accord with the Order of the Court of Appeals filed June 15, 1998, this Motion is Dismissed as an unauthorized second §2255.

IT IS THEREFORE ORDERED that Fleming's Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket #144) is dismissed as an unauthorized second §2255.

IT IS SO ORDERED THIS 6<sup>th</sup> DAY OF JULY, 1998.

  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

**FILED**

JUL 7 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES DAVID THORNBRUGH,

Defendant.

No. 89-CR-67-B ✓

97-CV-417-B

ENTERED ON DOCKET

DATE 7/10/98ORDER

This matter comes before the Court on Defendant's "motion for reconsideration of judgement" (Docket #125) filed on June 22, 1998. Defendant seeks reconsideration of this Court's Order denying Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and denying Defendant's motions pursuant to Rule 8(d) and for remission of assessment. On June 9, 1998, the Court entered judgment in favor of Plaintiff and against Defendant. The Court construes Defendant's motion as a timely motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e).

Whether to grant or deny a motion for reconsideration is committed to the Court's discretion. Hancock v. Oklahoma City, 857 F.2d 1394, 1395 (10th Cir. 1988). Generally, courts recognize three major grounds for reconsideration: 1) an intervening change in controlling law, 2) availability of new evidence; or 3) the need to correct clear error or prevent manifest injustice. Hamner v. BMY Combat Systems, 874 F.Supp. 322 (D. Kan. 1995).

Upon review of Defendant's motion, it is clear that Defendant does not contend that there has been an intervening change in controlling law or that new evidence has become available. Rather, Defendant merely restates his prior claims and argues that the Court made errors of reasoning. In light of Defendant's allegations of error, the Court has reviewed its prior Order and the law cited by

Defendant in his motion to reconsider. In its Order entered June 9, 1998, the Court addressed each of the claims raised by Defendant. After reviewing the Order, the Court finds no clear error. Therefore, the Court concludes that Petitioner's motion for reconsideration of judgment should be denied.

In the last paragraph of his motion for reconsideration, Defendant states: "Should this motion be denied, please make it and attached declaration a part of the record, and grant certificate of appealability." (#125 at 22). The Court notes that Defendant has not filed a notice of appeal; thus, Defendant's request for a certificate of appealability is untimely and is denied without prejudice. Should Defendant desire to appeal the Court's Order, he must comply with Rule 3 of the Federal Rules of Appellate Procedure, which requires the filing of a notice of appeal.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Petitioner's motion for reconsideration of judgement (Docket #125) is **denied**.

SO ORDERED THIS 6<sup>th</sup> day of July, 1998.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 8 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

Case No. 93-CR-61-B  
(97-CV-415-B)

KEITH EDWARD OVERSTREET, )

Defendant. )

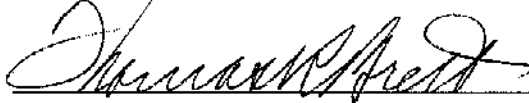
ENTERED ON DOCKET  
DATE JUL 16 1998

JUDGMENT

This matter came before the Court upon Defendant's motion to vacate set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant.

SO ORDERED THIS 8<sup>th</sup> day of July, 1998.



THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

65

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JUL 8 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

KEITH EDWARD OVERSTREET, )

Defendant. )

No. 93-CR-61-B ✓  
(97-CV-415-B)

ENTERED ON DOCKET  
JUL 10 1998  
DATE \_\_\_\_\_

ORDER

Before the Court is the motion of the *pro se* Defendant, Keith Edward Overstreet, to vacate, correct or set aside sentence pursuant to 28 U.S.C. § 2255. (Docket #52). The government has filed its response (#60). In addition, Defendant has moved for summary judgment (#61) and to proceed *in forma pauperis* (#62).

Defendant apparently bases his motion for summary judgment on the government's late filing of its response. The Court had granted the government until September 1, 1997 to file its response to Defendant's § 2255 motion; however, the response was not filed until September 17. While the Court does not view lightly the government's untimeliness in filing its response, Defendant does not allege that he suffered any prejudice from the sixteen day delay. Summary judgment is not properly entered under these circumstances, and Defendant's motion for summary judgment should be denied.

Defendant's motion to proceed *in forma pauperis* should be denied as moot, as Defendant was previously found to be indigent during pretrial proceedings.

Further, after reviewing the entire record in this case, the Court has determined that an evidentiary hearing is not necessary and that the § 2255 motion lacks merit and should be denied.

64

## **BACKGROUND**

Defendant met Miles Holden through a mutual friend in January 1993. Defendant and Holden agreed to an even exchange of Defendant's Jeep Cherokee for Holden's Camaro. After the trade, however, Defendant became unhappy with the mechanical condition of the Camaro. At approximately 1:00 a.m. on February 26, 1993, Holden drove the Jeep to an apartment complex to pick up a friend, and left the Jeep running while he went inside. As Holden returned to the Jeep, Defendant approached him holding a silver revolver. Defendant pointed the gun at Holden's face and pulled the trigger, but the gun did not fire. Holden ran and alerted a security officer, who followed the Jeep and a second car to obtain their license tag numbers. A half-hour later the police stopped Defendant and his brother in a Ford Tempo and arrested them. The Jeep was recovered later from Defendant's Tulsa address.

Defendant was convicted of armed "carjacking," in violation of 18 U.S.C. 2119 (count one), using a firearm while committing a crime of violence in violation of 18 U.S.C. § 924(c)(1) (count two), and possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1) (count three). Defendant was sentenced to concurrent terms of 77 months on counts one and three and a consecutive term of 60 months on count two, for a total of 137 months imprisonment, to be followed by three years of supervised release, and to a fine of \$2,000.

Defendant had been initially charged only with carjacking and use of a firearm. His first trial ended in a hung jury and a mistrial. Thereafter the government filed a superseding indictment realleging the first two counts and adding the third for possession of a firearm after being convicted of a felony. The jury found Defendant guilty on all three counts.

On appeal, Defendant challenged:

1. The constitutionality of the carjacking statute;
2. His convictions on counts one and two on Double Jeopardy grounds; and
3. The admission of evidence on the interstate movement of the firearm used by Defendant.

The Tenth Circuit affirmed his conviction. United States v. Overstreet, 40 F.3d 1090 (10<sup>th</sup> Cir. 1994). The United States Supreme Court denied certiorari. Overstreet, 514 U.S. 1113 (1995).

In his instant motion pursuant to §2255, Defendant raises only one issue: that he was provided ineffective assistance of counsel because his attorney failed to move to sever count three (the "felon-in-possession" charge) for trial purposes and failed to raise the lack of severance on appeal. Defendant claims that defense counsel's error "resulted in his second trial being unfairly infected with unfair prejudice by introducing his felon status." (#52, Memorandum at 9).

The government raises the defense of procedural bar, and alternatively contends that joinder of the counts was permissible under controlling Tenth Circuit precedent.

#### **ANALYSIS**

The government asserts that, because Defendant did not raise his claim of failure to sever on direct appeal, he is procedurally barred from raising it in this § 2255 motion. However, Defendant's instant claim is that his counsel was ineffective for failing to raise this issue at trial or on appeal. The procedural bar doctrine does not apply to claims of ineffective assistance of counsel first raised on collateral review. United States v. Galloway, 56 F.3d 1239, 1241 (10<sup>th</sup> Cir. 1995). Therefore, the Court considers Defendant's claim on its merits.

Defendant alleges that his counsel provided deficient assistance by failing to move, pursuant to Rule 14, Federal Rules of Criminal Procedure, to sever count three, charging Defendant with possession of a firearm after previous conviction of a felony. This count had been added after Defendant's first trial on counts one and two ended in a hung jury and a mistrial. Prior to the second trial, defense counsel moved to dismiss count three, claiming that it was added because of "prosecutorial vindictiveness," or in the alternative, to strike the description of the felony conviction from the indictment. (#23). After a hearing on the pretrial motions, the Court denied Defendant's motion to dismiss count three and held that the motion to strike was moot because the government agreed to strike the description of the felony in the indictment. (#30).

Defendant alleges that the result of his trial would have been different had defense counsel moved to sever count three after the motion to dismiss was denied. He points to the hung jury of his first trial to support his assertion that the evidence of his guilt was weak and that without the evidence of his prior conviction, it is likely that he would not have been convicted. In support of his claim that counsel's failure to move for severance requires reversal of his conviction, Defendant relies primarily on the Second Circuit case of United States v. Jones, 16 F.3d 487 (2d Cir. 1994). Defendant also claims that if the counts had been severed he would have been able to testify as to his innocence on count three, because his prior convictions would already have been exposed to the jury based on the nature of the "felon-in possession" charge.

To establish ineffective assistance of counsel, a defendant must show that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993). A defendant can establish the first prong by showing that counsel performed below the level expected



from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

There is a "strong presumption that counsel's conduct falls within the range of reasonable professional assistance." Strickland, 466 U.S. at 688. In making this determination, a court must "judge . . . [a] counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. Moreover, review of counsel's performance must be highly deferential. "[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Id. at 689.

Applying these standards to this case, the Court concludes that Defendant has failed to establish that his counsel's performance was deficient or that counsel's performance, even if error, prejudiced the defense.

The felon-in-possession charge (count three) required the government to prove that Defendant possessed a firearm in or affecting interstate commerce and that he had been "convicted . . . of a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). Defendant argues that his counsel should have moved for a severance of this charge for trial because the introduction of the evidence of his prior conviction caused him undue prejudice. Rule 14, *Federal Rules of Criminal Procedure*, provides in relevant part that "[i]f it appears that a defendant . . . is prejudiced by a joinder of offenses . . . the court may order an

election or separate trials of counts ... or provide whatever other relief justice requires." However, "[t]he decision to grant a severance is within the sound discretion of the trial court and its discretion will not ordinarily be reversed in the absence of a strong showing of prejudice." United States v. Strand, 617 F.2d 571 (10<sup>th</sup> Cir. 1980).

Because evidence of the name or nature of the prior offense does generally carry a risk of unfair prejudice, Old Chief v. United States, 117 S.Ct 644, 652 (1997), the Tenth Circuit has endorsed the "use of a redacted record, stipulation, affidavit, or other similar technique whereby the jury is informed only of the fact of the prior felony conviction, but not of the nature and substance of the conviction." United States v. Wacker, 72 F.3d 1453, 1472 (10<sup>th</sup> Cir. 1995), cert. denied, 117 S.Ct. 136 (1996). The giving of a limiting instruction is also viewed as an important safeguard against prejudice. United States v. Patterson, 20 F.3d 809, 816 (10<sup>th</sup> Cir. 1994); United States v. Valentine, 706 F.2d 282, 290 n.7 (10<sup>th</sup> Cir. 1983). In this regard, the Tenth Circuit has specifically indicated its unwillingness to follow the suggestion of the Second Circuit in Jones that limiting instructions are insufficient to cure the risk of prejudice posed by joinder of felon-in-possession charges. See, e.g., United States v. Nafkha, 1998 WL 45492, No. 96-4130 (10<sup>th</sup> Cir. Feb. 5, 1998) (unpublished opinion).

Reviewing the record in this case, the Court concludes that Defendant has failed to make a persuasive showing that the failure to sever the felon-in-possession caused undue prejudice. Prior to trial, the government amended the indictment to remove any reference to the nature of the prior conviction, and the stipulation read to the jury spoke only to the fact of conviction: "[o]n November 6, 1989 the defendant Keith Edward Overstreet was convicted of a felony, that is a crime punishable by imprisonment for more than one year, in the 14<sup>th</sup> Judicial Circuit Court of

Tulsa County, Oklahoma in case No. 89-2851." (Tr. of Jury Trial held Sept. 20-21, 1993 at 144-145).

Immediately after the Assistant U.S. Attorney read this stipulation, the Court gave the following limiting instruction to the jury:

THE COURT: All right. In reference to that stipulation, Count Three, one of the elements, having to do with the possession of a weapon after former conviction of a felony, obviously that stipulated fact there is relevant to Count Three.

But understand, ladies and gentlemen, that other than that narrow area, any prior conduct that's unrelated conduct of the defendant has absolutely nothing to do as proof of the necessary element or necessary facts to establish Counts One, Two or Three, so don't let any prior conduct on the part of the defendant interfere with your deliberations in reference to the guilt or innocence of the defendant in reference to Count One, Two or Three except in that very narrow area as an element of Count Three that I'll discuss with you further in the instructions.

(Tr. of Jury Trial held Sept. 20-21, 1993 at 145).

The jury instructions also included a limiting instruction that the prior conviction was to be considered only in determining whether the Defendant was guilty of count three. (#39).

Based upon the foregoing, it is clear that the fact of Defendant's prior conviction was not given unnecessary or undue emphasis at trial. The prosecution agreed to stipulate to the bare fact

of conviction so that no details of the offense were presented to the jury, and a limiting instruction was given by the Court. These safeguards have been held sufficient to avoid undue prejudice caused by the joinder of felon-in-possession charges. Patterson, 20 F.3d at 816; Valentine, 706 F.2d at 290.

Defendant alleges that the prejudice caused by the evidence of his prior conviction was compounded by the testimony of James Rogers, the Tulsa Police officer who arrested Defendant about one half-hour after the robbery took place. Specifically, Defendant points to this exchange:

**Q. (Assistant U.S. Attorney)** How did you come to see the defendant?

**A. (Officer Rogers)** We got a broadcast on the radio of an armed robbery and they put out the suspect vehicle and they gave Keith's name as the suspect. And I know Keith, I know who he is, I've come in contact with him several times before, so we set up on certain points thinking, well, he's probably going to be headed back north headed home. We thought we might be able to stop him on the way home. (Tr. of Jury Trial held Sept. 20-21, 1993 at 115-16).

Following that testimony, defense counsel moved for a mistrial based on Officer Rogers' referring to Defendant by first name and indicating his prior contacts with Defendant. The Court denied the motion, because the testimony explained why the officer suspected where Defendant was heading and how he was able to apprehend Defendant. (Tr. of Jury Trial held Sept. 20-21, 1993 at 137-139). Defense counsel subsequently moved to strike Officer Rogers' testimony as unduly prejudicial or in the alternative for a limiting instruction that evidence of past misconduct was not to be used as evidence of guilt of counts one and two. The Court denied the motion to

strike but did provide the limiting instruction. (Tr. of Jury Trial held Sept. 20-21, 1993 at 141-43). Insofar as he moved for a mistrial and to strike this testimony, defense counsel clearly did not provide ineffective assistance in this instance.

Further, Officer Rogers' testimony was not elicited due to the joinder of count three, but related directly to the carjacking charge and the events immediately preceding and following Defendant's arrest. Indeed, Officer Rogers testified at the first trial which did not include the felon-in-possession count. Therefore, the failure to hold a separate trial on count three has absolutely no connection to Officer Rogers' alleged prejudicial testimony. Additionally, although Defendant suggests that the cumulative effect of the failure to sever combined with Officer Rogers' testimony created unfair prejudice which justifies a reversal of his conviction, the Court is not persuaded that such is the case. As the Court held in denying defense counsel's motion for a mistrial or to strike, Officer Rogers testified about his familiarity with Defendant in order to explain why he waited where he did to try to intercept Defendant on his way home. The perceived prejudicial testimony was not deliberately elicited by the government, and the Court gave a limiting instruction regarding evidence of past misconduct. Under these facts, Defendant was not subject to undue prejudice.

Accordingly, the Court concludes that Defendant has failed to demonstrate that his counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88.

In any event, Defendant's claim also fails to meet the "prejudice" prong of Strickland. Defendant suggests that the "less than overwhelming" evidence of his involvement in the robbery (#52, Memorandum at 14) resulted in a hung jury after the first trial and would have led to a

similar outcome in the second trial if evidence of his prior conviction had not been introduced. However, the record reflects the very strong possibility that the hung jury resulted from jury tampering. (Tr. of Pretrial Conf. held Sept. 3, 1993 at 14-15; Tr. of Jury Trial held July 19-20, 1993 at 55-66, 77-83). Moreover, the evidence of Defendant's guilt, even though much of it is circumstantial, is more than sufficient to support his conviction on counts one and two. Defendant fails to persuade the Court that there is a reasonable possibility that the result of Defendant's second trial on the carjacking and § 924(c) charges would have been different if the felon-in-possession count had been severed and tried separately.

Finally, Defendant attempts to demonstrate prejudice by alleging that he would have testified at a separate trial on count three that he "never had a weapon that night, and that he did not rob Holden." (#52, Memorandum at 18). To determine if a claim of prejudice is genuine under these circumstances, the interests of judicial economy must be weighed against Defendant's interest in having a free choice with respect to testifying. Valentine, 706 F.2d at 291 (citing Baker v. United States, 401 F.2d 958, 977 (DC Cir. 1968)).

The Court cannot view Defendant's proffered assertions of innocence as having a reasonable possibility of an effect upon the verdict, in light of the totality of evidence pointing to his involvement in the robbery and his use of a firearm. Further, Defendant's protestations of innocence are in some respects cumulative in light of FBI Agent Josh Nixon's testimony that Defendant volunteered "something to the effect that this was a bad deal and that he had not done the carjacking or the robbery himself, that his younger brother had done it at his direction, and his brother had worn a hood or a mask." (Tr. of Jury Trial held Sept. 20-21, 1993 at 152).

Moreover, the interests of judicial economy strongly favor a combined trial on the three counts, because much of the same evidence relating to the carjacking would have had to be introduced in each of the separate trials. Accordingly, the Court concludes that no undue prejudice resulted from the failure to sever the counts for trial.

Because the Court has found that defense counsel did not err in failing to move for severance of count three, it follows that counsel's failure to raise this issue on appeal was not ineffective assistance. United States v. Cook, 45 F.3d 388, 393 (10th Cir.1995).


### CONCLUSION

Defendant has failed to establish that his counsel's performance was deficient and that the deficient performance was prejudicial. Strickland v. Washington, 466 U.S. 668, 687. Therefore, his claim of ineffective assistance of counsel is without merit.

### ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Defendant's motion for summary judgment (#61) is **denied**.
2. Defendant's motion for leave to proceed *in forma pauperis* (#62) is **denied** as moot.
3. Defendant's motion to vacate, correct or set aside sentence pursuant to 28 U.S.C. § 2255 (#52) is **denied**.

SO ORDERED THIS 8<sup>th</sup> day of July, 1998.

  
THOMAS R. BRETT, Senior Judge  
UNITED STATES DISTRICT COURT

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

UNITED STATES OF AMERICA

v.

Case Number 97-CR-147-002-K ✓

ENTERED ON DOCKET

DATE 7-10-98

JOHN ALLEN MARQUIESS  
 Defendant.

**FILED**

JUL 10 1998

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

Phil Lombardi, Clerk  
 U.S. DISTRICT COURT

The defendant, JOHN ALLEN MARQUIESS, was represented by Michael A. Abel.

The defendant pleaded guilty to Count 1 of the Indictment, March 16, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Transport Stolen Goods	4/12/97	1

As pronounced on July 9, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 10 day of July, 1998.

  
 The Honorable Terry C. Kern, Chief  
 United States District Judge

Defendant's SSN: 443-70-1205

Defendant's Date of Birth: 2/26/64

Defendant's residence and mailing address: 9531 S. 96th E. Avenue, Tulsa OK 74133



Defendant: JOHN ALLEN MARQUIESS  
Case Number: 97-CR-147-002-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 9 months.

The Court makes the following recommendations to the Bureau of Prisons: that the defendant be placed in a facility as close to Tulsa, Oklahoma as possible.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on August 7, 1998.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: JOHN ALLEN MARQUIESS

Case Number: 97-CR-147-002-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall participate as directed in a program of mental health treatment (to include inpatient) at the discretion of the U.S. Probation Officer, until such time as the defendant is released from the program by the Probation Officer. Further, the defendant shall be required to contribute to the cost of services for such treatment, not to exceed an amount determined to be reasonable by the Probation Officer, based on the ability to pay or availability of third-party payment.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JOHN ALLEN MARQUIESS  
Case Number: 97-CR-147-002-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500, as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JOHN ALLEN MARQUIESS  
Case Number: 97-CR-147-002-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	V
Imprisonment Range:	9 months to 15 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ n/a

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJs

*aw*

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 7-10-98

v.

Case Number 97-CR-173-004-K ✓

PAMELA WYCHE FORMAN  
Defendant.

**FILED**

JUL 10 1998 *CS*

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, PAMELA WYCHE FORMAN, was represented by C.W. Hack.

The defendant pleaded guilty to Count 1 of the Indictment, March 17, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Travel Interstate to Aid in Racketeering Enterprise	6/1/97	1

As pronounced on July 7, 1998, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 9 day of July, 1998.

*Terry C. Kern*  
The Honorable Terry C. Kern, Chief  
United States District Judge

Defendant's SSN: 440-54-2565

Defendant's Date of Birth: 12/27/51

Defendant's residence and mailing address: Tulsa County Jail, 500 S. Denver, Tulsa OK 74103

Defendant: PAMELA WYCHE FORMAN  
Case Number: 97-CR-173-004-K

### PROBATION

The defendant is hereby placed on probation for a term of 48 months.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of five (5) months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the Probation Office.
5. The defendant shall perform 50 hours of community service.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PAMELA WYCHE FORMAN  
Case Number: 97-CR-173-004-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	III
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of the defendant's substantial assistance.

DATE JUL 08 1998

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 98-CR-034-001-H ✓

DANNY EUGENE VAUGHN  
Defendant.JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

FILED

JUL 8 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, DANNY EUGENE VAUGHN, was represented by Stephen J. Knorr.


The defendant pleaded guilty to Count 1 of the Information, March 19, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1542	False Statement in Application of Passport	7/13/95	1

As pronounced on June 30, 1998, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 7<sup>th</sup> day of July, 1998.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 551-72-4923

Defendant's Date of Birth: 1/19/51

Defendant's residence and mailing address: 14237 Comanche Parkway, Burson, California 95225



Defendant: DANNY EUGENE VAUGHN  
Case Number: 98-CR-034-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 7 months, as to Count 1. Said term shall run consecutively to the defendant's imprisonment in Northern District of Oklahoma District Court case 98-CR-007-H and Tulsa County, Oklahoma District Court case CRF 95-1973.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: DANNY EUGENE VAUGHN

Case Number: 98-CR-034-001-H

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to Count 1, said term to run concurrently with case 98-CR-007-H.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer. It is specifically ordered that pursuant to this special condition, the defendant shall successfully complete a program of anger management. The program is to be approved by the United States Probation Office.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
7. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DANNY EUGENE VAUGHN  
Case Number: 98-CR-034-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	II
Imprisonment Range:	1 months to 7 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ n/a

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJJ

DATE **JUL 08 1998****UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma****UNITED STATES OF AMERICA**

v.

Case Number 98-CR-007-001-H

**DANNY EUGENE VAUGHN**  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)**FILED**  
JUL 8 1998Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, DANNY EUGENE VAUGHN, was represented by Stephen J. Knorr.

The defendant pleaded guilty to Count 1 of the Indictment, March 19, 1998. Accordingly, the defendant is adjudged guilty of such count, involving the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 922(g)(1) 924(a)(2)	Possession of a Firearm After Former Conviction of a Felony	4/25/95	1

As pronounced on June 30, 1998, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for Count 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 7<sup>th</sup> day of July, 1998.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 551-72-4923

Defendant's Date of Birth: 1/19/51

Defendant's residence and mailing address: 14237 Comanche Parkway, Burson, California 95225

Defendant: DANNY EUGENE VAUGHN  
Case Number: 98-CR-007-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 33 months as to Count 1. The Court notes for the record that this sentence is not a departure from the Court determined sentence of 44 months, but provides an adjustment for approximately 11 months served in state custody under Tulsa, County, Oklahoma Case Number CRF 95-1973, that will not be credited toward this federal sentence. The term of custody shall run concurrently with Tulsa County case CRF 95-1973.

The Court makes the following recommendations to the Bureau of Prisons: that the Bureau of Prisons designate the Oklahoma Department of Corrections to be the place of the service of this sentence.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: DANNY EUGENE VAUGHN

Case Number: 98-CR-007-001-H

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years, as to Count 1, said term to run concurrently with the term of supervised release imposed in Case 98-CR-034-001-H.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event, later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm, destructive device, or other dangerous weapon.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer. It is specifically ordered that pursuant to this special condition, the defendant shall successfully complete a program of anger management. The program is to be approved by the United States Probation Office.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
7. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DANNY EUGENE VAUGHN  
Case Number: 98-CR-007-001-H

**RESTITUTION AND FORFEITURE****RESTITUTION**

The defendant shall make restitution in the total amount of \$4,567.10. Interest accrual on restitution is waived by the Court.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Oklahoma Petroleum Worker's Compensation Association c/o Claims and Risks Claim Number 5407 PO Box 21450 Oklahoma City OK 73156 Attn: Vern Stonecipher	\$4,092.10
Orville Nichols 15 East 16th Street Tulsa OK 74119	\$475

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

If a victim has received compensation from insurance or any other source with respect to a loss, any restitution ordered shall be paid to the person who is a victim before any restitution is paid to any such provider of compensation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: DANNY EUGENE VAUGHN  
Case Number: 98-CR-007-001-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

#### Guideline Range Determined by the Court:

Base Offense Level:	21
Criminal History Category:	II
Imprisonment Range:	41 months to 51 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 7,500. to \$ 75,000
Restitution:	\$ 4,567.10

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by application of the guidelines.

BJJ



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 1 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE JONES,

Defendant.

Case No. 83-CR-132-E  
(97-C-121-E)

ENTERED ON DOCKET

DATE 7-6-98

ORDER

Now before the Court is the Defendant Jesse Jones' Motion to Vacate, Correct, or Set Aside Sentence Pursuant to 28 U.S.C. §2255 (Docket # 287).

Jones was convicted by jury on March 23, 1984 of Counts One (conspiracy to possess cocaine with intent to distribute in violation 21 U.S.C. §§841(a)(1) and 846), Two (attempt to possess cocaine in violation of 21 U.S.C. §846), five (carrying a firearm during the commission of a felony in violation of 18 U.S.C. §924(c)), Six, Seven and Eight (receipt of a firearm by a convicted felon in violation of 18 U.S.C. §922(h)), Nine (possession of a firearm by a convicted felon in violation of 18 U.S.C. §922(h)), and Ten (continuing criminal enterprise in violation of 21 U.S.C. §848) of a Second Superseding Indictment. The conviction on Count One was vacated as a result of the conviction on Count Ten. Defendant was sentenced to ten years each on Counts Two and Five to run consecutively; five years each on Counts Six, Seven and Eight, to run consecutively; two years on Count Nine to run concurrently with the sentence imposed in Counts two, Five, Six, Seven and Eight; and fifty years on Count Ten to run concurrently with the sentence imposed in Counts Two, Five, Six, Seven, Eight and Nine. Jones appealed his conviction, arguing 1) that the Court erred

295

in dismissing one of his attorneys on the first day of trial; 2) that the Court erred in denying his the right to proceed pro se on the day testimony was to begin; 3) that the Court erred in failing to grant him a psychiatric evaluation to determine his competency; and 4) that the search warrant was obtained without probable cause and based on dishonest representations by the affiant. Jones' conviction was affirmed by Order and Judgment dated October 10, 1986. Jones also filed a Motion to Correct Illegal Sentence on May 24, 1989, but withdrew that Motion before it could be considered on its merits.

Now, in his §2255 Motion, Jones argues that he received ineffective assistance of counsel at trial in that 1) his counsel team failed to conduct a proper pretrial investigation; 2) his counsel team failed to charge the government with outrageous conduct; 3) his counsel team failed to object to the government's failure to present witness Roy Lee Dunn at trial; and 4) his counsel team was disloyal and attempted to separate him from another prisoner who had been helping him with his defense.

Jones also argues that he received ineffective assistance of counsel on appeal in that 1) his appellate counsel failed to challenge the conviction on continuing criminal enterprise; 2) his appellate counsel failed to challenge the court's modification of the indictment to allow the jury to consider an uncharged offense in determining whether there was a "continuing series of violations;" and 3) his appellate counsel failed to challenge the admission of evidence of other crimes, wrongs or acts.

In defense of the fact that the errors raised in his §2255 motion were not raised on appeal, Jones premises each of his errors on ineffective assistance of trial or appellate counsel. Ineffective assistance of counsel claims must be viewed under the Strickland test: 1) whether defendant's attorney's performance was not reasonably effective and 2) whether defendant's defense was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A defendant can establish the first prong by showing that counsel performed below the level

expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. To establish the second prong, a defendant must show that this deficient performance prejudiced the defense, to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. See also Lockhart v. Fretwell, 506 U.S. 364, 369-70 (1993).

Further, the Court must presume that counsel's performance was reasonably effective, "the burden rests on the accused to demonstrate a constitutional violation." U.S. v. Cronin, 104 S.Ct. 2039, 2046 (1984). Under the Strickland rule the presumption of effective representation is a strong one. Indeed, "[j]udicial scrutiny of counsel's performance must be highly deferential." Strickland, 104 S.Ct. at 2065. The Court must "presume that the challenged action might be considered sound trial strategy." Hatch v. State of Oklahoma, 58 F.3d 1447, 1459 (10th Cir. 1995). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is applied in assessing the ineffectiveness of appellate counsel. United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995).

#### I. Veracity of Affidavit Underlying Search Warrant

The first three of Jones' allegations of error are related and all center around his allegations that the Affidavit by which the search warrant in this case was procured was either intentionally false or made with reckless disregard for the truth. An examination of the first allegation of error alone reveals the need for a hearing on this issue. Jones argues that his counsel should have performed an investigation that would have included an interview of the confidential informant, Roy Lee Dunn, prior to trial. Jones argues that the prejudice from this failure to investigate comes from the

testimony of Roy Lee Dunn at an IRS hearing on February 4, 1989. At the IRS hearing, Dunn gave testimony which calls into doubt statements made in the affidavit by Special Agent Ronald Bell.

Dunn testified at the IRS hearing that he knew Glenn Chism, a special agent for the Drug Enforcement Agency, but did not know Gerald Isaacs, a Tulsa Police Officer, or Ronald Bell, a special agent for the federal bureau of Investigation. Dunn testified that he did not accompany Jones to the bank for the purpose of withdrawing a large amount of cash, that he did not have any knowledge that Jones has purchased a large amount of cocaine, that he had only been in Jones residence twice, had remained in the living room, and had never seen anything of an illegal nature in the residence. Moreover, Dunn testified that he had not intentionally given any false statements to any government agent.

The standard for a hearing on the veracity of an affidavit underlying a search warrant is set forth in Franks v. Delaware, 438 U.S. 154, 171, 98 S.Ct. 2674, 2685 (1978):

There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant.

The Court finds that this standard is met, and a hearing is required under Franks. The focus of the Jones' burden, and therefore of the hearing, must be on the veracity of Bell, Chism, or Isaacs, and not on the veracity of Dunn.

## II. Conflict of Interest

Jones' fourth allegation of error is that his counsel demonstrated a conflict of interest when they attempted to get the court's help in separating Jones from another prisoner, Randy Ziegler, who had been "assisting" Jones in the preparation of his defense. Jones also argues, in his supplemental brief, that his counsel on appeal was ineffective in not raising this issue. In order to prevail on this claim, Jones must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. Cuyler v. Sullivan, 446 U.S. 335, 348 (1980). If an actual conflict is demonstrated, Jones, however, need not show prejudice in order to obtain relief. Id. at 349-50. Movant meets his burden here if he shows that "a specific and seemingly valid or genuine alternative strategy was available to defense counsel, but it was inherently in conflict with his duties to others or to his own personal interests." United States v. Migliaccio, 34 F.3d 1517 (10th Cir. 1994)(quoting United States v. Bowie, 892 F. 2d 1494, 1500 (10th Cir. 1990)). From this test, the Court finds that an actual conflict did not exist in this situation. Jones simply does not identify any specific, seemingly valid defense strategy that was abandoned because of his counsel's own personal interest.

## III. Sufficiency of Evidence on CCE

Jones argues here that the evidence is not sufficient to satisfy the "organizer, supervisor, or manager" requirement of a Continuing Criminal Enterprise. He argues that the government's evidence demonstrates, at best, that he fronted drugs to numerous persons, but that this buyer/seller relationship is insufficient to satisfy the requirement that organized, supervised, or managed 5 or more persons. In order to establish a continuing criminal enterprise under 21 U.S.C. §848, the government must prove: 1) a continuing series of violations of the Controlled Substances Acts of 1970, 21 U.S.C. §801 et seq.; 2) that the violations were undertaken in concert with five or more other persons with

respect to whom the accused acted as organizer, supervisor, or manager; and 3) from which the accused obtained substantial income or resources. United States v. Dickey, 736 F.2d 751 (1984).

Jones argues that the evidence, at best, supports a buyer/seller relationship, but does not establish that he was an "organizer, supervisor, or manager." Jones also argues that Darlene Byrd cannot be considered as one of the five required people because she was acquitted. The Court agrees that Byrd cannot be considered as one of the five persons. The Court, however, finds, with a review of the entire trial transcript that, when considering all inferences in the light most favorable to the government, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. United States v. Smith, 24 F.3d 1230 (10th Cir. 1994).

#### IV. Modification of the Indictment

Jones also argues that the Court impermissibly modified the indictment in its instructions, and that counsel on appeal was inefficient insofar as he failed to raise this issue on appeal. Jones actual complaint is that the indictment does not set forth a written statement of the essential facts constituting Count 10. A review of the Count 10 of the indictment reveals that it complies with Fed.R.Crim.P.7(c), and a review of the entire record reveals that Jones had sufficient notice of the allegations and was able to frame an adequate defense. See United States v. Rivera, 837 F.2d 906, 920 (10th Cir. 1988). Certainly, the prejudice prong of the Strickland test is not satisfied in this instance.

#### V. Evidence of other Crimes, Wrongs, or Acts

Lastly, Jones argues that his appellate counsel was ineffective because he failed to challenge the Court's admission of certain evidence. Jones argues that the following matters were improperly admitted into evidence in violation of F.R.E. 404(b): 1) Christopher Ray Grant's testimony that Jones

threatened to kill Grant and harm his family if he testified; 2) a tape recorded conversation between Jones and Roy Lee Dunn; 3) a prior conviction to establish that he was a felon in possession of a firearm; 4) telephone records used during Odell Braggs' testimony; and 5) Michael Houston's testimony. However, a review of the entire record reveals that each of these matters was admitted into evidence for a specific admissible purpose, and not simply as evidence of another crime. Grant's testimony showed a consciousness of guilt, the tape recording was used for impeachment, the prior conviction was an element of one of the charges against Jones, and the telephone records and testimony of Michael Houston established communications and relationships that were part of the crimes with which Jones was charged. Because there was no error in admitting this evidence, there is no prejudice, and no cumulative error.

The Court finds that Jones has raised issues sufficient to justify a hearing on the veracity of the statements in the affidavit underlying the search warrant. A hearing, on this issue only, is for Monday the 27<sup>th</sup> day of July, at 9:30. In all other respects, Jones' Motion Under 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody (Docket #281) is denied.

IT IS SO ORDERED THIS 15<sup>th</sup> DAY OF JUNE, 1998.

  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED  
JUL 1 1998

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE JONES,

Defendant.

Case No. 83-CR-132-E  
(97-C-121-E)

ENTERED ON DOCKET

DATE 7-6-98

**JUDGMENT**

This matter came before the Court upon the Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Docket #287) of the Defendant, Jesse Jones. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Plaintiff and against Defendant on all issues except that of the requested Franks hearing.

A hearing is set for Monday, the 27<sup>th</sup> Day of July, 1998, at 9:30 a.m.

IT IS SO ORDERED THIS 1<sup>st</sup> DAY OF JUNE, 1998.

  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

296